KASHMIR
CONSTITUTIONAL HISTORY
AND DOCUMENTS

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Vol–I
Constitutional History

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Preface

The volume presents the original documentary sources, both official and non-official, pertaining to the growth of the political institutions and the related constitutional cover the most stormy and the turbulent period of the modern history of Kashmir and bring to light original sources in regard to the administrative structures established by the Dogras and the frames of political control they devised, the Constitutional instruments they evolved for the Government of the State and the incredible operation of the British Colonial Organisation in India. The documents also bring to surface, considerable fact and data in regard to the freedom movement in the State, the evolution of the responsible Government, the transfer of power in India and the political convulsions which stuck the State in the aftermath of Indian independence.

The papers selected for the present volume have been compiled with a view to facilitate in depth studies in the Constitutional History of the State and also presents the readers with ready reference of other relevant sources. Since researches and investigations in the various aspects of the constitutional development of the State, are still to be undertaken, the relevance of the present study is obvious. Most of the documents have been collected from the papers presented in the British Parliament, printed in the Government Gazette and published by the Government of India, or the Government of Kashmir, from time to time. Some of the papers have been collected from the Archives of the different political Organisations which were involved in the politics of the State. Considerable care has been taken to preserve the substantive content of the documents edited for this volume. The Documents included

in this volume pertains to :

(i) The Dogra administrative system,
(ii) The operation of Paramountcy,
(iii) The evolution of the responsible Government in the State,
(iv) The transfer of power in India and the accession of the State to the Indian Union,
(v) The Constituent Assembly of the State, and
(vi) The Constitution of the State.

A special feature of the volume is that a comprehensive survey of the constitutional history is included in it and the reader is provided with a clear perspective of the different trends, the politics in the State assumed. Efforts have been made to present a coherent and conjointed account of the various political developments in the State within which the reader can conveniently place the related documentary sources. The authors have attempted to analyse the situational compulsions which led to various political changes in the State, interpret the judicial processes devised from time to time and locate the directions, the evolution of the various political institutions took. No study of this type has been undertaken in regard to the Government and politics of the State so far and to that extent the present study is expected to fill a long felt gap in the history of the State.

The authors owe a deep debt of gratitude to the Director of Archives and the keepers of the Record Jammu and Kashmir State, Librarian, Research Library Srinagar, Librarian, National Library Calcutta, Librarian, Khuda Baksh Library Patna, and the Superintendent Records, Food Control Department Srinagar. The authors are grateful to Dr. Mohd Yasin Professor and Head of the Department of History, Kashmir University and Late Kh. Abdul Ahad Burza for tneir guidance. The authors are indebted to Shiban Lal Putu, Rajinder Razdan and Jawahar Lal Bhatt who read through the Manuscripts. The authors are also grateful to Mrs. Sarla Kaul, Miss Santosh Teng and Mr. Ajoy Bhatt for their valuable assistance.

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Chapter **1**

Constitutional History

After the first Anglo Sikh War, which ended in the defeat of the Sikhs, the British assumed virtual control of the Sikh possessions. By virtue of the Treaty of Lahore which formalised the post-war settlement, the Sikhs ceded to the British, the territories of Jammu, Kashmir, Ladakh with Baltistan and the districts of Hazara and Chamba. The British transferred the territories in independent possession to Raja Gulab Singh of Jammu, a Rajput fendatory of the Sikhs, on the condition that the Raja paid to the Honourable Company one lac of rupees in part fulfilment of the indemnity the British had imposed on the Sikhs and the latter had expressed their inability to pay.

Gulab Singh was a Dogra Rajput of Jammu who joined the Sikh army in the wake of the annexation of Jammu by the Sikhs.[1] A valorous soldier, he did not take long to rise in power and prestige at the Sikh Court. For his active military service and loyal political support, Gulab Singh was given the

[1] K.M. Pannikar, *Founding of the Jammu and Kashmir State*, p. 19.

principality of Jammu in farm in 1820.[2] Two years after, he was awarded the fief in perpetual possession and bestowed with the title of Raja. As ambitious as he was valorous, Gulab Singh settled down to a vigorous policy of consolidation and expansion and in less than a decade he extended his sway over the numerous Rajput principalities spread around his fief. In 1834, he mounted offensive against the Kingdom of Ladakh and brought under his control the territories of Ladakh along with the tribal chieftainships of Baltistan.[3]

Maharaja Ranjit Singh died in 1839. He was succeeded by his eldest son Maharaja Kharak Singh. Kharak Singh was weak and irresolute and the politics at the Sikh Court, which had remained secure under the iron grip of Ranjit Singh, rapidly lost its direction and its stability. Kharak Singh's life was short lived. He died in 1840. After that the empire fell into turmoil. An inconclusive struggle for succession ensued which ultimately broke up the Sikh State. The Dogras, led by Raja Dhyan Singh and his son Hira Singh, were by far the most powerful faction at the Sikh Court. With Gulab Singh, infact, the most formidable feudatory of the State at their back, the Dogras managed to hold the balance at the Sikh Court for some time. However, the Khalsa crumbled under its own weight. The Dogras despised by most of the Sikh leaders for their possessions and fortunes gradually lost ground and were finally liquidated. Dhyan Singh was killed in the blood-bath which started with the assasination of Maharaja Sher Singh.[4] Dhyan Singh's son, Hira Singh, who assumed the wazarat with the help of the army, and strove hard to stabilise the affairs at Lahore, was removed from the scene by the Sikhs a few months after. Gulab Singh alone survived. The astute Raja managed to poise himself on the precarious balance between the warring factions at Lahore. He was not, however, spared and the Sikh troops, more than once, rode in strength to Jammu, to undo the Raja but with sheer diplomatic skill and strategem Gulab Singh kept himself alive and

[2] *Ibid.*, p. 29.
[3] *Ibid.*, p. 74.
[4] Bikarm Jit Hasrat, *Anglo-Sikh Relations*, p. 220.

his possessions in tact.[5]

The British involvement in the Sikh politics intensified as the disintegration sunk deeper in the Sikh empire. They eagerly awaited the separation of the Dogra principalities from the Sikh State, for they rightly assumed that so far the Sikh-Rajput alliance, which the Sikh monarch had forged with great skill, was not broken, the invasion of the Punjab would not be easy.[6] With determined effort they pursued a policy aimed to divide the Sikh State and evidence is available to show that they actively supported the attempts to push out the Dogras from the Punjab.[7] Once that was accomplished, the British knew, they could, and without much difficulty, invade the Punjab. The reduction of the Rajput principalities would follow. They bided time and waited for the opportunity to strike. Meanwhile they commenced their military preparations for the invasion. All over the summer of 1845, the British augumented their strength along their borders with the Punjab, built fortifications, brought up reserves to their advanced positions on the front and reinforced their cantonments at Ferozpore, Ludhiana, Ambala and Kasauli.[8] On the other side of Sutluj, the Sikhs, not oblivious to what happened along their frontiers, continued to fight among themselves. Even after, the Sikh armies crossed the Sutluj in December, 1845, the leaders at Lahore were far from united. Lal Singh, the Prime Minister, refused to take over the command of the troops. The Commander-in-Chief, Tej Singh, a sly and foxy conspirator, who was already in clandestine contact with the British officers and had offered his services to them for any consideration the British would bestow on him, was equally reluctant to lead the Sikh troops. In fact, both the Prime Minister and the Commander-in-Chief, wanted the Sikh armies to be beaten by the British, and secure themselves in their possessions.[9] Gulab Singh confined to his fief, frantically tried to secure his position against

[5] K.M. Pannikar, *Founding of the Kashmir State*, PP 66-72.
[6] M.K. Teng, Introduction, *Kashmir Papers*, XIV.
[7] Bikarm Jit Hasrat, *Anglo-Sikh Relations*, p. 220.
[8] *Ibid.*, p. 250-51.
[9] *Ibid.*, p. 262-63.

the Sikhs whose hostility towards him had abated little and the British whose intentions were still unknown. Many other Court dignitories also were in secret liason with the British agents and officials and well aware of the fate that awaited there armies, they tried to earn the favour of their enemy in order that they were able to retain their possessions after their State was destroyed.[10] Except for a few men of honour, the Sikh leaders, were involved in the treacherous plot to get their army and the State liquidated and then grab the spoils.

The British mounted their first offensive against the Sikhs two days after the Sikh armies crossed the Sutluj. Khalsa rose to the occasion but treachery took its toll. The Sikhs suffered severe reverses in a number of successive engagements.[11] In the hour of crisis the Sikhs turned to Gulab Singh for leadership and invested him with the control of affairs at Lahore. Once in power, the Dogra Chief sought to secure himself both against the British as well as the Sikhs. He was a shrewd politician and an astute statesman. He was well aware of the fact that the Khalsa was exhausted by conflict and depleted by internecine strife and the Sikhs had lost the capacity to stand against the British. He also realised that the influence, he had weilded in the empire had waned after his brothers had been liquidated. There were few chances for the Sikhs to recover and still less for him to retain his position and power. He could forsee that from the position of authority he was in, he could deal with the British as well as the Sikhs with greater advantage to himself. He still had a huge and lucrative fief, was rich in money and materials and had quite a few powerful legions of hill troops to support him in case he needed to force an issue. He followed a policy of discrete conciliation towards the British, avoided to cause any offence to them, admonished the Darbar for its rash actions and actually pressed it to come to an interim war-time settlement with the British and avoid any further crisis.[12] He left the army to its fate, allowed the traitors Lal Singh and Tej Singh to remain in command of the troops,

[10] *Ibid.*, p. 263.
[11] *Ibid.*, pp. 267-75.
[12] *Ibid.*, p. 276.

in all probability with deliberate intent and remained behind in Lahore almost inactive.[13] Perhaps, he wanted to keep the situation fluid and find a way to secure himself before the fate of the Sikhs was decided. In one respect he showed a remarkable sense of realism.

The last and most decisive battle of the Anglo-Sikh war was fought at Sobraon, a small village on the banks of Sutluj, where the British launched their final assault on the Sikh position. The Sikhs fought valiantly. But the empire had already been sold. Gulab Singh, and the other ministers and military generals were in secret contact with the British and eagerly awaited the destruction of the Sikh army.

> Tej Singh, the Sikh Commander-in-Chief, had fled soon after the first assault. He had either by accident or design, sunk a boat in the middle of the Bridge, and had cut off Sikh retreat. Sham Singh Attariwalla had taken over the command, and rallied the soldiers of Gobind not to give up, but die for Khalsa. Lal Singh and his cavalry force were no-where to be seen. He had taken the road to Lahore.[14]

Sobraon was lost and with that the Sikhs lost their freedom. The victorious British armies entered Lahore on 20th February, 1846. After the surrender at Sobraon, the Sikh resistence was practically broken.[15]

The Honourable Company demanded from the Sikhs the entire territory of Jullunder Doab between Sutluj and Bias, control of the two rivers, demobilisation of the Sikh army, and an indemnity of one and a half crore of rupees. In defeat the Sikhs agreed to part with their territories, but Lal Singh, who had assumed the Wazarat at Lahore after the war, expressed the inability of the Durbar to pay the huge indemnity and instead offered the provinces of Jammu and Kashmir with the districts of Hazara and Chamba to the British. Lal Singh wanted to deprive Gulab Singh of his huge fief and at the same time ward off the British demands. The British had however,

[13] J. D. Cunningham, *History of the Sikhs*, Ed. H.L.O. Garret, pp. 420-22.

[14] Bikarm Jit Hasrat, *Anglo-Sikh Relations*, p. 282.

[15] *Ibid.*, p. 284.

their own reasons to refuse to accept the transfer of the territories offered to them.[16] An understanding was reached between the British and Gulab Singh and it was decided that Gulab Singh would be transferred in independent possession the provinces of Jammu and Kashmir and the districts of Hazara and Chamba in lieu of which Gulab Singh would pay one crore of rupees to the Company in part fulfilment of the indemnity, the British had imposed on the Sikhs. By this dubious deal, the British struck a bargain of diplomatic alternatives with the Dogra chief, ensured the redemption of the demand for the war indemnity, alienated the Rajputs from Sikhs and brought the entire tract of the hills running north of the Punjab under the British protection. The terms of settlement between the Sikhs and the British were formalised by the Treaty of Lahore which was drawn up and signed on March 9, 1846. Among other things the Treaty stipulated :

> The British Government having demanded from the Lahore state, as indeminification for the expenses of the war, in addition to the cession of territory described in article 3, payment of one and a half crores of rupees; and the Lahore Government being unable to pay the whole of this sum at this time, or to give security satisfactory to the British Government for its eventual payment; the Maharaja cedes to the Honourable Company in perpetual sovereignty, as equivalent for one crore of rupees, all his forts, territories, rights and interests in the hill countries which are situated between the river Beas and Indus, including the provinces of Kashmir and Hazara.[17]

The transaction with Gulab Singh was finalised at Amritsar on March 16, 1846, by a separate agreement with him Article I of the Treaty of Amritsar provided :

> The British Government transfers and make over for ever in independent possession, to Maharaja Gulab Singh and heirs male of his body, all the hilly or mountainous country, with its dependencies situated to the eastward of

[16] K.M. Pannikar, *Founding of the Kashmir State*, P. 108.
[17] Treaty of Lahore, Article 4.

the river Indus and westward of the river Ravi, including Chamba and excluding Lahol, being part of the territories ceded to the British Government by the Lahore State according to provisions of Article IV of the Treaty of Lahore dated March 9, 1846 A.D.

Trans-Beas portion of Kulu and Mandi which were included in the territories transferred to Gulab Singh were retained by the British, in consideration of which twenty-five lacs of rupees of the amount Gulab Singh had to pay, were waved off in his favour.[18] The rest of the payment was to be made by the Maharaja into equal instalments. Shortly after the Maharaja took possession of the territories made over to him, he expressed his desire to cede the province of Hazara to the British, an offer which the latter readily accepted, and in return transferred to the Maharaja the districts of Suchetgarh and parts of the districts of Gurdaspur with a small chunk of territory from Kangra which was inhabited by the Dogras.[19]

THE DOGRAS

Gulab Singh faced considerable difficulty to forge an integrated political structure for the State he had founded. It was no easy task to establish uniform institutions of political control in the State and secure an effective response to his government. The territories transferred to him were extremely hetrogenous and suffered marked disparities in ethinic and cultural patterns, language and economic organisation. The three regions did not share a common history, a mutually inter-acting culture and common language. The province of Jammu to which the Dogras belonged presented few problems and Gulab Singh did not interfere with the traditional frames of social stratification and property ownership. Knit into a strong framework of caste and bound by imperatives which were mainly tribal in character, the Dogra Rajputs did not prove difficult to be dealt with. In fact the existing instruments of social and political control, property relationships and the local rule preferences were used by Gulab Singh as well as the

[18] K.M. Pannikar, *Founding of the Jammu and Kashmir State*, p. 116.

[19] Khushwant Singh, *History of the Sikhs*, p. 58

Dogra rulers who followed him as the most dependable bases to consolidate their position.

In the province of Kashmir, the Maharaja, however, faced major problems of political organisation and administrative sanction. The more stable political forms established during the Karkotas and after them during the reign of the early Sultans had either disintegrated or been destroyed by the ruling dynasties that followed. An organised administrative organisation did not exist and its place had been taken by agencies of blackmail and oppression. The court grandies, in whose hands the operatives of power lay, used them for personal benefit. The wide spread landed aristocracy which had grabbed almost the entire land in the province, the heirarchy of the village officials, spies, revenue collectors and tax contractors, the vast mass of Karbhanadars, who monopolised the few industries flourishing in the State and the gallaxies of big and small commercial magnates, who in collusion with the State officials, manipulated and maintained a pernecious system of trading, formed the long lines of oppressors who fed on the population of the state.

> The administration of Kashmir called forth all the statesmanship of Gulab Singh. In the later days of Sikh administration the affairs of the province had been sadly neglected. The shawl industry, which is the mainstay of the population of Kashmir, was weighed down by heavy and capricious taxation, reckless Governors, especially Sheikh Imam-Uddin had given away much of the land in the valley as rent free concessions, an oppressive system of Begar, or forced labour, made the life of the peasantry miserable, sati and infanticide were common, the hilly areas were infested with robbers.[20]

Gulab Singh settled down to the task of administration with determined effort. He put down rebellion with a strong hand and order was restored in every part of the country. In Kashmir, the Maharaja took immediate steps to restore peace and tranquility. Jagir grants and other concessions in land

[20] K.M. Pannikar, *Founding of the Kashmir State* P. 134.

were reviewed, taxes were rationalised and the shawl industry was reorganised. Rationing was introduced in order to meet the usual famine conditions in the province.

> The great difficulty that the Maharaja experienced was with regard to Jagir grants. There were no less than 3,115 Jagirs granted in Dharmarth besides numerous alienations of other kinds. A large number of them were unregistered. The Sikh Governors, Sheikh Goolam Mohi Udin and Sheikh Imam-Uddin were extremely lavish in their grants, especially the latter, who for the sake of popularity signed away large tracts of land at the end of the Sikh regime. As soon as the Maharaja took charge of his country he instituted an enquiry of quowarranto. The Jagirdars and other grantees greatly and loudly complained that the Maharaja was resuming their ancient possessions.
>
> Tyler, who conducted an independent enquiry, states that the Maharaja was inclined to be just and reasonable. His point was that people who began as revenue farmers should not claim the land they held in farms to be Jagirs; that grantees who were given one acre should not be allowed to possess two on the same sanad, and that in case of treason, rebellion and gross misbehaviour the Jagirs should be liable to resumption.[21]

The civil administration of the State was entrusted to a council of courtiers each of whom was put incharge a department of the Government. Most of these officers who were called Dewans or Ministers enjoyed varied importance at the court. The Ministers were headed by a senior Minister who had precedence at the court and wielded considerable influence over the Maharaja. The other senior Ministers advised the Maharaja, who in substance retained the power of government in himself, on foreign relations of the State, finances, revenue collection and taxation. Treasury was separately put incharge of a Dewan, while another Dewan supervised the Maharaja's household and private Toshakhana. Another Dewan headed the department of information. The troops remained directly

[21] *Ibid.*, p. 135.

under the command of the Maharaja. The Ministers remained in office at the will of the ruler, and could be dismissed or demoted unceremoniously whenever they incurred the displeasure of the ruler. Functions of the government were neither defined nor demarcated and the business was allocated by the Maharaja himself, arbitrarily and at his will. The heirarchy of the officials which constituted the administrative structures at various levels, was hardly reorganised after he assumed the reins of the government, and continued to be as haphazardly placed as it was before. Even at the lower levels the demarcation of functions was not attempted. The troops were employed to supervise the collection of revenue, the magistrates and petty officials acted as judges, revenue officials were employed to work as spies and report on the affairs of the localities put in their charge, and the tax collectors were frequently put on onerous task of maintaining law and order. Feeding on black mail, because few of them were paid from the State treasury, the officials grabbed much of what was left with the people after the State had collected its share. The administration of justice was entrusted to executive officers, the Maharaja being the Chief Adawlte. He vested in him the power to hear cases in the first instance as well as in appeal against a nazrana of rupee one presented with the petition.[22]

For administrative convenience the Maharaja devided his domains into three provincial divisions, i.e., Jammu, Kashmir and the frontier regions of Ladakh and Gilgit, each division being put under the control of a Chief-Officer whose position was analogous to that of a governor. The officers remained in attendance on the Maharaja at his court.[23] Each division was further subdivided into districts and each of the districts was put in charge of a district officer. Jammu division comprised four districts : Jammu, Jhupal, Kishtwar and Jasrota. The Kashmir province was divided into two major divisions Kamraj and Maraj, each put under the superintendence of a district officer. The frontier regions were divided into two districts: Ladakh, which was put under a local

[22] Drew, *Jammu and Kashmir Territories*, p. 1.

[23] Notes on Jammu and Kashmir, National Archives of India, Foreign, Political A, July 1863, No.73-75.

governor and Gilgit which was put under the administrative control of the commanding officer of the State troops stationed there.[24]

Obviously the authority of the government and the powers of administations were centralised in the Maharaja, who followed in principle, the pattern of personal rule which his master Ranjit Singh had adopted in the Punjab. The ruler personified the state. He was the source of all authority and the fountain-head of justice. All property belonged to him and in the capacity of the chief land-lord his power to tax, raise revenues and levy forced labour was absolute. Gulab Singh, in fact resumed most of the Jagir grants,[25] awarded before him, by the Sikh Governors, among them particularly by Sheikh Imam-Uddin for political and other reasons.[26]

In one respect, however, the government established by Gulab Singh did not differ in essentials from the oriental despotism which characterised the Princely States in India. Except for conservative reaction and the instruments of political blackmail which the Princes inherited or later devised, they were hardly left with any of the nativity they claimed. They were protected proteges of the British colonialism and their power and position were secured by the Government of India. The sanads, treaties and agreements on which the Indian States' structure was based, were in content, commitments to a subordinate alliance. The Princes had no inherent powers. Gulab Singh realised this clearly and in of his communications to the Governor General, he wrote :

> Your honour's gracious letter is a source of extreme joy to me and I sincerely believe that your honour has elevated me to skies. I am ready to sacrifice my life and property as a proof of my obedience to your honour. As it is the duty of the obedient to prove worthy of any test. I am ready for your honour's orders. I am extremely grateful to the gracious British Government for its kindness and favour done to me. Any one who is faithful to the Hono-

[24] *Ibid.*

[25] K.M. Pannikar, *Founding of Kashmir State*, p.135.

[26] *Ibid.*

urable Company has to remain faithful with his heart and soul. As an obedient servant, he has to carry out all orders.[27]

Maharaja Gulab Singh suffered from dropsy and within a few years of his rule his health began to fail. By 1856, his condition worsened. A statesman of great farsight, the Maharaja was well aware of the difficulties that could arise in regard to succession after his death. Two of the Maharaja's three sons were already dead, the eldest having perished with Naunihal Singh, the heir apparent to the Sikh throne, on the fateful day, Maharaja Kharak Singh was cremated and a stone archway gave way and crashed over the funeral procession as it wound its way back to the capital.[28] Ranbir Singh, who alone survived, did not keep good health and the Maharaja was eager to put him on the throne during his life time. He knew that his prestige and his influence with the British, whose confirmation was necessary to sanction the installation of his son, would definitely weigh in his favour. The Maharaja had however, many reasons to be anxious. The British had become aggressive and had subjected him to considerable embarrasment on more than one occasion. Besides, his nephews, Jawahir Singh and Moti Singh, had laid a claim to a large part of the State and contested the right of Maharaja Gulab Singh to have assumed undisputed mastery over the territories of the State which they contended belonged to their father, Raja Dhyan Singh and their uncle Raja Suchet Singh.[29] Though Jawahir Singh had been deprived of his Jagirs in the State in 1852, and Moti Singh confirmed in possession of his Jagir in Poonch, Gulab Singh remained apprehensive of the trouble, the brothers could foment. Accordingly, the Maharaja deputed Dewan Jawalla Sahai to communicate to the Governor-General, his desire to enthrone Ranbir Singh. The Government of India readily agreed to confirm the installation and the succession was smooth. The Government of India awarded a khillat to

[27] F. M. Hassnain, *British Policy Towards Kashmir*, Quoted p. 29.

[28] Khuswant Singh, *History of the Sikhs*, p. 12.

[29] K. M. Pannikar, *Founding of the Kashmir State*, p. 121, Thakur Karan Singh, *Tarikhi Rajgan Jammu wa Kashmir*, p. 176.

the Maharaja. Gulab Singh himself, made out a patta in favour of Ranbir Singh by virtue of which he conferred the title of the Maharaja on him and laid down certain instructions for him to follow. Gulab Singh enjoined upon his son that he should be loyal to the British, keep his army properly equipped, watch the borders, govern his people well and maintain friendly relations with the British.[30]

Ranbir Singh, after he succeeded his father, did not materially change the basic structure of the personal rule his father had established. The Maharaja retained the powers of the government with himself and the different departments remained as usual in charge of the ministers who were appointed by the Maharaja and were responsible to him. An attempt was made by the Maharaja to demarcate the various functions of the administration and separate departmental organisations were established for the army, foreign relations, home affairs and religious endowments. The provincial administration was modified to the extent that resident governors were appointed for the two provinces under whom were placed the district officers who supervised the administration in different districts in each province. The divisional distribution of Kashmir province was abolished and the province was redistributed in districts which were administered by district officers. Chief Courts, presided over by Adwalattes were established at Srinagar and Jammu to hear cases in first instance and in appeal. The Maharaja, also retanied the power to hear cases in first instance and in appeal.

The judicial system, even after the appointment of the Chief Courts, was characterised by much abuse. Interference by the officers of every rank in the administration of justice was common and parochial procedures, which were derogatory to any principles of justice, continued to remain in vogue and guide the courts at every level in the dispensation of justice. Describing the judicial system, the Minister in charge of the law and the Courts in the State, wrote to the Government of India, a year after Maharaja Ranbir Singh died :

On taking over charge of the office of Judicial Member

[30] Quoted F. M. Hassnain, *British Policy Towards Kashmir*, p. 37.

of the State Council, I was surprised to find that it was singularly charcteristic of the courts to make the most unnecessary and vexations delays in the disposal of cases and my first duty was to advert on their conduct—in certain cases which came before me in appeal . . . .

The presiding officers of the courts had judicial work performed by their clerks, and it has been with great difficulty that I have partially succeeded in getting them to record their proceedings in their hand. There are still a number of ignorant and illiterate Tehsildars and other officers, owing their employment to strong official influence, who would not and could not carry out my instructions.

I have come across, many criminal trials in which a single line in the form of judgement had never been recorded, while instances have repeatedly come to my notice of courts neglecting the rudest principles of equity and jurisprudence, putting suitors to all sorts of annoyance. . . .

A curious custom prevailed, enabling private persons to make money by laying information exposing the conduct of State servants. Such complaints are called "Khair-khawai" and were entertained by the criminal courts without any reference to the department in which the accused was employed. The officials, in a body, being addicted to misappropriation of money received by them in the course of official duty, easily avoided investigation by bribing the informers, and the Darbar itself, not being well prepared to check corruption, or recover money embezzled by its servants, such misappropriations were committed with impunity, so that at the present day there is hardly an official who, if a proper enquiry was instituted, would not have to account for his misconduct . . .

Execution of decrees is tedious, and, as no civil case is held to be finally decided until it is confirmed in appeal by the highest tribunal, which generally takes seven to ten years, execution is generally stayed till then.

I will here say a few words regarding the laws in force. There is a Penal Code, but there is no Code of Criminal Procedure.

Similarly, there is a Code of Civil Procedure, but there is

no substantive code of civil law, nor is there any law of limitation. . . .

There is a clause in Penal Code under which a Magistrate could take cognizance of an act or ommission not specified therein, if such act or ommission appears to him to be objectionable in the cause of society, and he may sentence the accused to a fine of Rs. 25/-. This gives Tehsildars and Revenue officers ample opportunities to punishing people for disobedience of order, contempt of authority, and other supposed offence. . . . .[31]

[31] Note on Administration of Justice in Kashmir State, Bhag Ram, Nov. 18, 1889.

Chapter 2

British Intervention

The transfer of the territories of Jammu and Kashmir to Gulab Singh in independent position was only a temporary phase in the grand design to subjugate the Rajputs after the Sikhs had been vanquished.[1] The Amritsar transaction was an act which recognised the British ascendence and it is open to question whether the Dogras were preserved any real and substantial quantum of independence and sovereignty. The Treaty bound the Dogras to a subordinate alliance with the British, and the Dogras did not only recognise the British supermacy but also agreed to pay tribute to them, a fact which almost destroyed the technical independence they were presumed to have acquired. By explicit and clearly defined provisions, the British acquired complete control over the external relations of the State, thus extending a political protectorate over the Dogra estates. The Dogras accepted to submit disputes to the British arbitration which arose between them and the Sikhs or any other neighbouring States. The Dogras also

[1] Ellenborough to the Duke of Wellington, 20th October 1843. *The Punjab Papers*, p. 67.

undertook to put their troops at the disposal of the British, whenever the latter were involved in the hills, a stipulation which gave the British vicarious power to determine the disposition of the Dogra armies. The other restrictions which were imposed on the Dogras were that,

(i) the territories of the State would not be altered without the concurrence of the British ; and
(ii) the Dogras would not employ in their service any British, American or any European subject, without the permission of the British.[1]

On their behalf the British promised to give aid to the Maharaja to protect his territories from external attack.[2] The Dogras were thus integrated into the broad and complex structure of the British colonial empire in India, and were subjected, more or less, to the same restrictives, as the other Indian States were. All that the Dogras acquired, was a wider orbit of autonomy, the extent of which was also left to be determined by the British. Like the other Indian States, Jammu and Kashmir was also subject to the operation of the British power which was bound by no limits and treaty stipulations. The treaty stipulations with the Princes were legal limitations on the Princes and were often invoked and made use of by the British. The rights and privileges, and sovereignty and power, ostensibly reserved for the Princes, were empty attributes. The Princes were fictitious entities.

So far the British remained preoccupied with the crisis in the Punjab, they left Gulab Singh to himself; but after the final subjugation of the Sikhs and the annexation of their territories, the British lost no time to extend effective political control over the Rajputs. A few months after the Maharaja got the possession of his territories, the Government of India complained to the Maharaja that they had received reports of oppression in the State and had decided to depute Henry Lawrence to make an on the spot enquiry in to the working of the administration of the State and report on the conditions there. Lawrence found

[1] Treaty of Amritsar, Articles.
[2] *Ibid.*, Article.

the allegations false and absolved the Maharaja of the blame.[4] Inspite of his findings, however, the British Commissioner did not spare the Maharaja and warned him that the British Government would not "permit tyranny in Kashmir" and in case the administrative set up was not reorganised, "some other arrangements would be made for the protection of the hill people".[5] Lawrence also advised the Governor-General to administer a warning to the Maharaja. In his communication, the Governor-General told the Maharaja that the Indian Government would not hesitate to interfere directly in the administration of the State in case the Maharaja failed to take effective steps to reorganise the Government of the State.[6]

The psychological shock the British delivered to the Maharaja was aimed to score on him the impression that his possessions were an inseparable part of the British empire in India and the orbit of authority he was reserved, was determinable by the British and depended on their goodwill. The British warnings, obviously underlined the establishment of their jurisdiction within the territories of the State, a policy which they had adopted and with over-whelming success, in extending their hold over the many other Indian States. The policies of dual jurisdiction within the same state had been used by them as the most potent instrument of subversion, intimidation and final subjugation of the petty principalities and native States in India. Once the British established a jurisdiction in any State, it was gradually extended to bring the entire administration of the State within its scope.

A more direct suggestion was made to the Maharaja by the British in 1852, when the Government of India proposed the appointment of an "Officer on Special Duty" in the State to look after the European visitors who came to Kashmir in large numbers and whose conduct in the State required supervision.[7]

[4] National Archives of India, Foreign Secret, 28th November, 1847, No. 36-41.

[5] National Archives of India, Foreign Secret, 28th January, 1848, No. 35.

[6] National Archives of India. Foreign Secret, 28th January, 1848, No. 34-A.

[7] National Archives of India, Foreign Political. 14th December, 1852, No. 82 and 83.

The Maharaja strongly refused to countenance any such proposals but ultimately relented and agreed to the appointment of the "British Officer on Special Duty" in the State. The attempt to appoint a British Officer to the State was made to secure,

(i) the right to administer jurisdiction in the State for which the Treaty of Amritsar did not stipulate any provisions ; and
(ii) the right to define the limits of the authority within which the Ruler of State exercised his authority.

The rebellion of 1857, struck the British hard and in fact, destroyed whatever was left of the Honourable Company. For once the arrogance of the British officials was broken and in desperation they sought to secure, whatever help they could, to save themselves from the catastrophe. Lawrence, who was in the Punjab, received the news that Delhi had fallen to the Indians, on 11th May 1857. Immediately he sent a communication to Gulab Singh seeking his help. At the same time he strengthened the defences of the Punjab, which of course, did not present many difficulties for the indifference the Sikhs exhibited towards the Indian uprising. Without any loss of time, Gulab Singh, who had relinquished his throne in favour of his son, Ranbir Singh, instructed the Maharaja to put his troops in readiness, refuse entry into the State or employment in the State troops to any 'Purbias' and keep a strict watch on the borders. Maharaja Ranbir Singh despatched a force of three thousand troops to assist in raising the seige of Delhi and the Dogras fought well by the side of the British.[8] After the uprising was successfully suppressed the British bestowed a Khilat of a lac of ruppees and Jagir in Oudh upon the Maharaja, who very politely refused to receive the grace and with much supercilious demeanour told the British that he had done his duty out of loyalty and good will.[9] Shortly after, Gulab Singh died.

After the mutiny, the British sought to find fresh lines of

[8] Jammu and Kashmir State Archives, No. 175.
[9] P.N. Bazaz, *Inside Kashmir*, p. 39.

approach towards the Indian States, which, they realised, were the citadels of reaction on which the British could fall back in case of need. Their policy with regard to Kashmir was determined by different considerations. With the assumption of the Company's possessions by the Crown, the frontiers of the British empire suddenly stretched all over the entire north of the sub-continent. The imperial expansion, so diverse and expansive, had deep and wide ramifications for the British almost everywhere they were committed. Immediately, the entire Central Asia was brought into the vortex of rivalry for territorial possessions and political influence. The proximity of the Russian borders, the vulnerability of the vast Central Asian belts to a probable Russian advance, the political instability of the Afghans and the other tribal chieftains situated along the borders of India and the competition for economic advantages in these regions, were in fact, the main considerations which determined the policies of the Indian Government with the regard to the Dogras. The Russians actually started a vigorous compaign of consolidation and expansion immediately after the proclamation of the British empire in India. By 1850, they established themselves along the Amu river. In less than four years they subjugated almost all the Caucacian hill tribes. In 1865 they subjugated Tashkand. The annexation of Khojend followed in 1866. Samarkand and Bokhara were annexed by 1868 and Kurgan fell to them the following year. The Russian expansion did not only alarm the British officials, for the fact that the menacingly widening frontier of a hostile power posed problems of security, but it blocked the prospects of any further improvement in trade and commerce with the peoples inhabiting the Central Asian regions particularly Turkestan, with its fabulous wealth and resources. In fact, two important officials of the Indian Government R.H. Davies, Secretary to the Government of the Punjab and Thomas Dougals Forsythe, Commissioner and Superintendent of Jullundhur. Vigorously pleaded for the abolition of the monopoly, the Dogras had, of the trade and commerce across the State borders and the abolition of duties imposed on it by them.[10] The Government

[10] R.H. Davies to Secretary Government of India, 23rd January, 1863, National Archives of India, Foreign Political, May, 1863, November, 9-12.

of India sounded the Maharaja. He refused to yield and offered a reduction in duties levied on goods imported into Kashmir. That did not satisfy the British and in 1867, they appointed a Trade Agent at Leh. The Agent, immediately after having assumed office, advised the Government of India to open fresh trade routes with Turkistan and order the abolition of all levies and restrictions on trade across the frontiers of the State.[11]

Mayo, who succeeded Lawrence in 1869, had no predispositions his predecessor had with regard to the Dogras. He took up the issue of the Ladakh Frontier with the Maharaja. Commerce and trade with the Central Asian States, particularly with eastern Turkistan was uppermost in his mind as it was in the mind of every other British official, directly or indirectly concerned with the northern frontiers. In 1870, the control on the trade across the Ladakh border was wrested away from the Maharaja and a new arrangement was devised to keep the commerce and politics of the frontier under the close watch of the Government of India. By an agreement,[12] which was actually forced on the Maharaja, all levies and duties on trade with Central Asia were abolished. The administration of the trade routes was entrusted to Joint Commissioners, who were appointed by the Government of India and were vested with judicial powers and special authority to control and supervise trade between Central Asia and the British India. The loss in the revenue incurred by the Maharaja was to be compensated by the British Government.

Actually, however, the settlement was a prelude to a long and protracted process of intrigue and intimidation by which the entire northern frontier of the State was finally brought under the effective control of the Government of India. The appointment of the Joint Commissioners in Leh, and the extension of the British control over the Ladakh frontier was a material and substantial change in the political and legal relations that obtained between the Dogras and the British. In fact it was for the first time that effective territorial jurisdiction

[11] Cayley's Report, National Archives of India, Foreign Political A, March, 1969, No. 7.

[12] The Commercial Treaty 1870, Treaties and Documents Relating to Jammu and Kashmir State, Archives Repository, Srinagar.

was assumed by the British in a part of the State.The authority acquired by the British was unfailingly intended to cover the entire frontier of the State.

The same year, Dougles Forsyth was deputed on a commercial mission to Yarkand. He was also charged to investigate into the political and strategic conditions prevailing in the region for reasons of reported Russian activity and Afghan hostility. In 1873, he was sent again. Forsyth succeeded to enter into a trade agreement with Yarkand and secured concessions for the import of British products in Central Asia. A British official designated the "Special Assistant Resident for Chinese Affairs" was appointed to stay in Kashgar. Forsyth, however, warned the Government of India that the strategic passes of Baroghil and Ishkoman which led across the ranges running north of the Dardi principalities of Chitral, Yasin and Gilgit were easy and passable and in case a hostile power came to control them, the Dardi principalities could be lost easily.[13] The Dardi principalities were scattered over the entire country from Anmb to Rondu and included Chitral, Darel, Tangir, Hunza, Nagar, Chilas, Punnial, Yasin and Gilgit. Gilgit was under the Dogras. The safety and security of the Dardi principalities was of vital strategic importance to the British for, from Chitral, Yasin and Gilgit, a close watch could be kept on Russian as well as Afghan movements.[14]

On the basis of these considerations the British commenced a complete reappraisal of the entire frontier policy which inevitably involved a reconsideration of their relations with Kashmir. The British policy, as it took shape assumed three aspects,

(i) to secure the Dardi principalities under the British control;
(ii) to eliminate any Afghan influence in the region and frustrate any collaboration between the Afghans and the Russians; and
(iii) to acquire control over Gilgit.

[13] National Archives of India, Foreign Secret, July, 1877, No. 34-B.
[14] National Archives of India, Foreign Secret Proceedings, July, 1877, No. 35.

A military adventure into the Dardi principalities was impossible, for the British were neither prepared to risk involvement in the sensitive outposts so close to the Russian borders nor were they ready to undertake major military commitments on such a remote front. Lyton struck for a different course. He offered Maharaja Ranbir Singh the money and material to bring the tribal principalities under his control. This would ensure the British, virtual control over the principalities without any major military commitments and any political consequences so far as the Russians were concerned. The proposals to extend control over the Dardi principalities were put forth to the Maharaja by the Governor-General personally at Madhopur in November, 1876.[15] The offer made by the Governor-General was subject to the condition that the Maharaja accepted the appointment of a British Political Officer at Gilgit to report directly to the Government of India on the developments which occured on the border. The Maharaja was apparently reluctant to accept the appointment of a Political Officer in Gilgit. Finally, however, he accepted the officer, probably in the hope of extending his territories[16].

The efforts of the Dogras to subjugate the Dardi principalities proved abortive. Hardly equipped with necessary power and prestige, incapable to take any purposeful action and crudely unaware of the cultural relationships and political conditions in the region, the Dogras achieved little. John Biddulph, the British Officer,made the situation more difficult. He bypassed the Kashmir authorities, established direct contact with the tribal chieftains, played one against the other and deliberately created disaffection among the tribal leaders against the Dogras.[17] The active political interest the Dogras took in the region and the indiscriminate intervention in the internal affairs of the tribal chieftainships by the British Officer, turned the tribals against both. The entire frontier erupted alive. Consequently the forward thrust by the Dogras failed. Gilgit

[15] National Archives of India, Foreign Secret, Proceedings, July, 1877, No. 38.

[16] National Archives of India, Foreign Secret, Proceedings, July, 1877, No. 39.

[17] Buddulph's Memo on the Condition of Affairs in Gilgit, 31st March, 1881.

Agency was promptly withdrawn.[18]

The withdrawal of the Gilgit Agency was however, only a temporary phase in the British policy, a prelude, as it proved to be, to the extension of a more effective control over the northern frontiers of the State as well as its administration. Pressure had, in fact, been building up on the Government of India for the reconsideration of its policies towards Kashmir.[19] The Officer on Special Duty in Kashmir insisted on a more drastic line of approach and pleaded for enhancement of his powers. The Government of India, however, bided time. In 1880, the Governor-General sent a stern warning to the Maharaja that his administration was far from satisfactory and the Government of India would intervene if the matters were not set right. In an interview the Governor-General told the Maharaja's Agent:

> You know, we have been governing India for the last so many years and consider the Maharaja as a sincere friend. We have never interfered into the internal affairs of the State. But whereas the Maharaja is a Hindu, and the British Government have entrusted the Muslim population of Kashmir to him; and if he neglects to look after his subjects properly, the Government of India will be forced to take up responsibilities of administration upon itself. Tell the Maharaja that if the administration is not set right, the British will intervene.[20]

In 1884, the decision to appoint a Resident Political Officer in the State was finally taken.[21] An indication of what was come was given to the Maharaja by the order of the Government of India, instructing him to conduct correspondence with regard to frontier and other important matters through the Officer on Special Duty. The Maharaja protested and asked permission to conduct correspondence directly with the Governor-General.

[18] Introduction, *Kashmir Papers*, P. XXII.

[19] *Ibid.* p. XXIV.

[20] Jammu and Kashmir State Archives, Old English Records, File No. 835 of Samvat, 1937 (1881).

[21] Ripon to Kimberly, 7th April 1884. National Archives of India Foreign Secret E, May, 1884, No. 354-57

His request was turned down.[22]

Maharaja Ranbir Singh died on 12th September, 1885. On 15th Septembr, the Officer on Special Duty met Pratap Singh and conveyed to him that the Government of India had recognised his accession to the throne. During the same meeting, the Officer on Special Duty told the Maharaja that the Government of India found "the existing conditions of affairs in the state as most unsatisfactory" and in order to help in the speedy reorganisation and reform of the administration, it had decided to appoint a Resident Political Officer in the State.[23]

The Officer on Special Duty explained to one of the members of the Maharaja's Council, who had been sent by the Maharaja to seek clarification about the exact functions of the Resident, that the Resident Officer would leave all the "active work of the administration to the Durbar, while claiming the right to be made acquainted, should he require it with all its details." The Officer on Special Duty told the emissary of the Maharaja that the Resident "would give advice if asked for, and on any point he thought proper unasked; and in this latter case, would expect his advice to be followed."[24]

Maharaja Pratap Singh appealed to the Governor-General to reconsider the appointment of the Resident and give him some time to improve his administration. The appeal was unceremoniously set aside by the Government of India. On 25th of September, Pratap Singh was formally installed the Maharaja. The same day, the Officer on Special Duty assumed the Office of the Resident Political Officer in the State.

On the assumption of the throne, Maharaja Pratap Singh announced a number of reforms. The custom of 'khod-kasht' by which the State formed a part of the village lands was abolished. The custom of 'Leri', according to which the spies and other officials were paid by the remission of rent in land, was also abolished. The practice of requiring every ten houses in the Jammu province to provide one sepoy, forced enlistment and the practice of forcing the families of deserters to provide

[22] Jammu and Kashmir State Archives, 1884, No. 515-B.

[23] St. John to Durand, 16th September, 1885; Dufferin to Pratap Singh. 14th September, 1885, National Archives of India, Foreign Secret E, December; 1885, Nos. 190-240.

[24] Introduction, Kashmir Papers, XXV.

substitutes, was also abolished. The taxes on village spies, the 'Harkara' and 'Zillahdars', taxes on the sale of horses and taxes on the carts 'Ekhas' were also abrogated. The practice of collecting custom duties on the import of rice into Srinagar town in Kashmir province was also discontinued.[25] In his proclamation in the open Durbar, the Maharaja promised :

> I need not trouble you now with minute details of what I intend to do, but I think I can declare without committing myself to any particular measure the policy and the general principles that will guide me in the conduct of my affairs. I shall adopt such measures as are calculated to secure to my subjects their greatest good and the fullest enjoyment of their rights and privileges, and shall conduct my administration so that the tiller of the soil will enjoy a fair share of the produce of his labour and the manufacturer the fruit of his skill and industry, that every facility will be given to commerce by improving the means of communication and removing unnecessary and vexatious restrictions, that every encouragement will be offered to get all the resources of the country properly developed, that adequate measures will be taken to give my subjects the benefits of sound and useful education, that ample provision will be given for the relief of the sick and the suffering, and that real merit and worth in my subjects will be recognised and fostered without any distinction of race or rank, creed or colour.[26]

Instructions had been given to the Resident by the Government of India, at the time, he assumed his office, to convey to the Maharaja that the Government of India was not satisfied with the administration of the State and warn him that in case effective action was not taken to improve the administration, the Government of India would take such measures as were necessary. The Government of India had underlined certain measures which according to them deserved the first priority. These measures included the abolition of the State

[25] Manifesto read by Babu Nilamber Mookerji in Durbar, 25th September, 1885.

[26] Pratap Singh's address to the Durbar, 25th September, 1885.

monopolies, reorganisation of the financial administration of the State, rationalisation of taxes, construction of roads and the removal of the restrictions on emigration.[27] Many of the proposed measures were beyond the power of the Maharaja, for he had hardly the resources to depend upon. The feeble efforts made by him were hardly expected to change the situation materially. In fact, there were many glaring defects, the Dogra administration suffered from. The utmost that the Dogras had achieved was that they had perfected in institution of 'personal rule' they had inherited from their predecessors.

Most of the officials of the Government were incapable, corrupt and devoid of any administrative acumen. The Maharaja was surrounded by an inner coterie of personal advisors among whom sycophants, quacks fortune-tellers rated the first. Credulous, devoid of any political foresight and understanding of the basic issues of administration and purile in his orthodoxy, he could muster little courage to exert himself effectively in the affairs of the Government. The administration thus fell to the lot of the court grandies who hardly made any constructive contribution to the welfare of the State but rapidly sapped the Government of its resources.[28]

In 1886, the Government of India appointed T.C. Plowden, a diehard British bureaucrat and pastmaster in intrigue, the Resident Political Officer in the State. Plowden lost no time to undo the Maharaja.[29] He turned his first attention to the Maharaja's Council of Ministers, undermined its solidarity and finally broke it up.[30] Maharaja, after his accession to the throne, had appointed a new council of Ministers headed by one Gobind Sahai. He had also appointed Nilamber Mookerji, a trusted official of his father, the Finance Minister. Mookerji did not get along well with the Chief Minister. Plowden took advantage of the rift and put his weight against Mookerji,

[27] Secretary of State, the Government of India, Foreign Department to Officer on Special Duty in Kashmir, dated August 1, 1884.

[28] Introducton, *Kashmir Papers*, p. XV.

[29] J C. Bose, *Kashmir and its Prince*.

[30] National Archives of India, Foreign Secret E, Proceedings, October, 1886, No. 275.

openly charging him and the few other Bengali officials, of the rot in the administration of the State. Mookerji could not stand the combined opposition of the Diwan and the Resident, lost his ground and in September resigned from his office. Immediately afterwards, he was externed from the State.[31]

Hardly a month after Nilamber had left the State, the Government of India, obviously on the advice of the Resident, asked the Maharaja to dismiss Gobind Sahai and the other ministers and appoint a new Council with Dewan Lachman Dass, the Governor of Kashmir, as the Chief Minister of the State and his younger brothers Amar Singh and Ram Singh as its members. Lachman Dass was a protege of the Resident.[32] Pratap Singh refused to change the ministry. His relations with his brothers were far from cordial and Lachman Dass did not enjoy his favour. However, when the Government of India posed the alternative to bring in Raja Moti Singh of Poonch, the Maharaja, scared out of his wits, quickly agreed to dismiss Gobind Sahai.[33] In January, 1887, Gobind Sahai was dismissed and Lachman Dass was appointed Dewan.[34] Once in office, Lachman Dass removed whatever opposition he had, and forced out, many of the personal advisers of the Maharaja from their office. The Maharaja reacted sharply which led to the deterioration of the relations between him and his Dewan. The state of suspense was abruptly brought to an end when the Maharaja made a bold move and dismissed Lachman Dass.[35]

Plowden anticipated the dismissal of Lachman Dass and in order to forestall the Maharaja and thwart him from taking any action against his protege, he wrote to the Government of India that it was futile to expect any improvement in the admi-

[31] Plowden to Durand. National Archives of India, Foregin Secret E, Proceedings, October, 1886, No. 275; also, Plowden to Durand October, 1866, Foreign Secret E. Proceedings, No. 439.

[32] National Archives of India, Foreign Secret E, Proceedings, December, 1866, No. 73.

[33] *Ibid.*

[34] Plowden to Cunningham 14th February, 1887, Proceedings March, 1887, Nos. 46-48.

[35] National Archives of India, Foreign Secret E, 66, J C. Bose, *Kashmir and its Prince*, p. 33.

nistration of the State so far drastic action was not taken by the Government of India. The Resident underlined three alternative courses, the Government of India could take : first, that Amar Singh, the Maharaja's younger brother be appointed the Dewan after an assurance was secured from him that he would carry out the policies laid down by the Government of India; second that a person from outside the State be appointed the Prime Minister, by the Government of India; third, that the existing Council be put under the control of the Resident.[36]

On his part, the Maharaja did not wait and hurriedly despatched a Kharita to the Government of India which envisaged a fresh scheme for the reorganisation of the administration in the State. The Maharaja proposed that a Council, which would consist of a President, Vice-President and a Secretary, with three other members would be constituted by him to assist him in the conduct of his government. The Maharaja would retain all powers in himself and the function of the Council would only be consultative. The Maharaja would himself be the President of the Council and would appoint its Vice-President, the Secretary and the other members. Any removal from the membership of the Council and the replacements made, would be effected by a majority of the members of the Council for reasons which would be put on record. The Vice-President would also be the Prime Minister of the State with executive powers. The Maharaja proposed that Raja Amar Singh would be appointed the Vice-President of the council with Raja Ram Singh and Babu Nilamber Mookerji as its members. Dewan Janki Prasad was proposed to be the third member and also the Secretary of the Council. The Maharaja proposed that Raja Ram Singh would be put in charge of the armed force of the State; Raja Amar Singh would be entrusted with the foreign affairs and the judicial department; Babu Nilamber Mukerji would be put in charge of the revenue department and Dewan Janki Prasad would be put in charge of the remaining departments of the Government.

With regard to the procedure of business in the Council,

[36] Plowden to Foreign Secretary, National Archives of India, Foreign Secret E, Proceedings, March, 1866, No. 108.

the Maharaja proposed,

(i) that the Council would sit for three days in a week and hold extraordinary meetings on requisitions by the Prime Minister;
(ii) that the Council would legislate and hear and pass opinion on all subjects that would be presented before the Council by the members;
(iii) All matters would be decided in the Council by a majority of the votes of its members;
(iv) that besides the matters which were brought before the Council, the Prime Minister would be empowered to refer to the Council important questions that affected the administration in general. The respective opinions of the members would be put on record and signed; and
(v) that the Council would frame rules for its guidance which could be repealed and modified by the Council itself.[37]

The Government of India expressed its readiness to accept the scheme of administrative reorganisation presented by the Maharaja, but the Governor-General blankly refused to accept the appointment of Nilamber Mookerji and Dewan Janki Prasad. Lord Dufferin opposed the appointment of Nilamber Mookerji with particular vehemence. In the Kharita to the Maharaja, he wrote :

> Nevertheless, I do not desire to raise any objection to the principle of the proposed arrangements. I regard your Highness as the responsible ruler of the State, and I wish to meet your views as far as possible, and to afford you every assistance in carrying them out. If, therefore, your Highness prefers to maintain a Council and to assume the Presidency yourself, I am ready to assent to your views in this matter, and also with regard to the nomination of your brothers and Dewan Janki Prasad. On

[37] Kharita from Pratap Singh to the Governor-General, 13th April, 1888.

one point only I feel that in your Highness's interests I must ask you to modify your proposals. I cannot think that the appointment of Babu Nilamber Mookerji as Revenue Minister would be desirable. I am of opinion that for the charge of the revenue affairs your Highness should secure the services of some thoroughly competent official with practical experience of administration. I also think that at least one other official of similar qualifications should be appointed to direct, either as member of Council or in some other capacity, the judicial and executive branches of your Government. If your Highness can name any Native Officials in the British service who seems to me to possess the requisite qualifications I shall be glad to place them at your disposal. If your Highness cannot suggest any names I shall be ready and willing to make inquiries, and to supply you with the best men available either in the Punjab or elsewhere. I have learnt with pleasure that your Highness has already asked for the services of some four or five officers to be employed in the accounts and forest departments. But Your Highness's government seems to require something more than the loan of a few subordinate officials. What is wanted is that you should associate with your principal officers two to three thoroughly trained and capable persons, who will be able to give Your Highness effective aid in directing and controlling the main branches of the administration. I trust that your Highness will take such steps as may have the effect of strengthening your government from an administrative point of view. I need hardly add that, with regard to this question and to all other questions of importance, Your Highness should freely consult the Resident, who will give you every assistance in his power.[38]

Pratap Singh was allowed to appoint the reconstituted Council. The British were however, far from satisfied with the situation as it was developing in the State and the conditions in the State taken along the frontiers. Intelligence had been

[38] Kharita from the Viceroy to Pratap Singh, 25th July, 1888.

received by them that the Russian interest and activity in the Dardi principalities had increased and the Russians were making efforts to wean away the chieftains from the British and bring them under their own influence. Convinced that the State frontiers could not be neglected any more, the British adopted a policy aimed, in the first instance, to establish direct control over the Dardi principalities and in the second place reduce the Maharaja and assume political precedence in the State. A political Durbar was held by Durand in Gilgit to which all the Frontier Chiefs were invited to attend. The Chiefs and Wazirs and the influential Sirdars were granted subsidies and fixed allowances.[39] Simultaneously the Maharaja was advised to reduce his armed forces which the British felt were larger than any Indian State had British military adviser, assisted by three other officers, was deputed to carry out the reorganisation of the army. A plan to construct important military communications was drawn up. The Maharaja, reluctant to accept the, now balantant interference in his government, could hardly withstand the British pressure.

Towards the close of 1888, the Residency made a startling disclosure that it had come to possess letters of treasonable nature, written by the Maharaja to Tzar, Maharaja Dalip Singh and some other favourites, the Maharaja had in the State.[40] The Maharaja denied having written any of the letters.[41] The Resident, Parry S. Nisbet, who had replaced Plowden and who was a personal friend of the Maharaja, wrote to the Government of India that Raja Amar Singh had testified that the letters were genuine and written by Pratap Singh. In fact, the plot to implicate the Maharaja was well laid out. Closing the trap, Nisbet communicated to the Government of India:

> The conclusion, the letters lead me to are confirmed by certain extraordinary acts of the Maharaja in appointing unworthy and incapable persons to important offices of the State ever since I took charge, without consulting

[39] Jammu and Kashmir, State Archives, No. 1091-A of Sambat 1946. (Persian Record).

[40] Nisbet to Durand 27th April, 1889, National Archives of India, Foreign Secret E, Proceedings, April 1889, N0.80.

[41] National Archives of India, Foreign Secret E, April, 1889, No. 89.

> the proper counsellor, or, in fact, any one at all. The thing is the Maharaja is timid and a very superstitious man at the entire mercy of a set of unscrupulous scoundrels who take advantage of his fears and imbecility to plunder the state to any exent, and there appear to me weighty reasons for advising the practical setting aside of the Maharaja's authority.[42]

In the whirlwind that followed, Nisbet, in collaboration with his acccmplices, extorted from the Maharaja, an edict of voluntary resignation by virtue of which the Maharaja relinquished all the powers of the government for a period of five years.[43] In the edict, the Maharaja was made to state :

> In the interests of the 'state' and for better administration of the country, and with a view to remodel it, as near as possible, on the English system, I hereby authorise a Council, the members of which, for a period of five years will conduct all the public affairs of the State.[44]

The Council was to be constituted of his two brothers, two of his ministers Rai Bahadur Pandit Suraj Kaul and Rai Bahadur Bagh Ram and an English member 'specially selected by the Government of India.' The period for which the Maharaja renounced the powers of the government was to commence from the date the edict was signed. The Maharaja was not to interfere with the function of the Council, nor was he to have any voice in the administration of the State, though he would continue to enjoy the honorary rights and the position of the Maharaja. The Council was barred to interfere with the private affairs of the Maharaja, the Palace, the Jagirs and the other grants of movable and immovable property he had

[42] Nisbet to Durand, 27th February. 1889, National Archives of India, Foreign Secret E, Proceedings, No. 80.

[43] National Archives of India, Foreign Secret E, Proceedings, 1890 No.179 and 180.

[44] National Archives of India, Foreign Secret E, Proceedings April, 1889, No. 88; Foreign Secret E, Proceedings, May, 1889, No. 555; Foreign Secret E, Proceedings, September, 1890, No. 179, 180.

made. The Council was also precluded from altering any existing agreements or treaties without the previous approval of the Maharaja and assign Jagir grants or immovable property or make any new rules on these matters without the consent of the Maharaja. The Maharaja reserved the right to appoint one of his brothers, the President of the Council.[45] On 13th March, 1889, the Resident forwarded the edict to the Government of India urging immediate acceptance of the offer the Maharaja had made. Gilgding the perfidy, Nisbet wrote to the Government of India :

> I trust this voluntary offer on his part may afford, with further conditions, an acceptable way out of no doubt a very acute difficulty. As the Government of India have carefully refrained as long as was possible from any sort of interference in the direct management in the affairs of Kashmir State, so I think now a direct appeal to do so cannot be ignored, and that there should be no hesitation in adopting the best and most complete measure likely to bring about the reforms necessary.[46]

On 1st April, 1889, Government of India conveyed their decision to the Resident. The Maharaja was divested of all his powers and the administration was entrusted to the Council composed of the Maharaja's brothers and three or four members selected by the Government of India.[47] The Council convened its first meeting on 18th April, 1889, and adopted rules and procedure to regulate the appointments to the Council, distribution of business among the members, conduct of business in its meetings and the procedure of its work. The Council was composed of Raa Ajmar Singh, who was also appointed the Prime Minister, Raja Ram Singh, Pandit Suraj Koul and Rai Bahadur Bagh Ram.[48] The Council laid down

[45] *Ibid.*

[46] National Archives of India, Foreign Secret E, Proceedings, April, 1889, No. 86.

[47] Instructions from the Government of India to the Resident, April 1, 1889. National Archives of India, Foreign Proceedings E, April, 1889, No. 96.

[48] Proceedings of the State Council, 18th April, 1889.

the following provisions ;

(i) The Council was to be constituted of Raja Amar Singh, Raja Ram Singh, Pandit Suraj Koul, Rai Bahadur Bagh Ram and such other members as were appointed by the Government of India;
(ii) The members of the Council were to be appointed by the Government of India and were to hold independent charge of their respective departments;
(iii) Additional appointments to the Council and any vacancies in its membership were to be filled by the Government of India;
(iv) The distribution of business among the members of the Council was to be regulated by the orders of the Council;
(v) Subject to the control of the Resident, the Council was vestcd with all the powers of administration and authority over frontier relations and relations of the State with its dependencies;
(vi) Legislative and administrative measures were to be taken only after the sanction of the Council;
(vii) The members incharge of the different departments of administration were vested with the power to prepare the budget estimate of their departments which were submitted to the Council for final sanction and approval;
(viii) The Council vested itself with the power to veto or alter any order passed by the member in charge of a department and order revision of any proceedings of the department;
(ix) The Council was vested with the power to make all gazetted appointments in the State; and
(x) The Resident was vested with power to be the final authority in matters of legislation and administration.[49]

In July, the Council decided to appoint Amar Singh the President of the Council and the executive head of the

[49] Jammu and Kashmir Archives, No. 23 of 1902, His Highness Private Record.'

administration.[50] In the capacity of the head of the administration he became the channel of communication between the Council and the Resident as well as with the native States, except in political matters which were conducted through the Resident. He was empowered to call for and examine all proceedings except those of the judicial and revenue courts and refer them to the Council for review. All the official letters from departmental officers to the Resident, were to pass through him and were to be counter-signed by him. All the appointments made by the Council were confirmed by Sanads bearing his seal. He was vested with the custody of all State documents and the authority to sign all orders for the withdrawal of monies from the reserve treasuries after such withdrawals had been sanctioned by the Council. He was also empowered to bestow Khillats, awards and charitable grants within the budget provisions sanctioned, scrutinise grants of Jagirs and Maufis or "submit to the Council any change thought desirable in the terms of the existing Jagirs or Maufis."[51]

British Control

The extensive powers of the government vested with the Council and its President, were however, only nominal and the real power lay with the British Resident under whose supervision and control the Council functioned and who was the final arbiter and authority in all the matters of administration.[52] The members of the Council were mere puppets and hardly in a position to accomplish anything except to carry out the whims and the dictates of their benefactors. Both Amar Singh and Ram Singh were, in their attitudes and outlook little different from their brother, who they had helped the British to depose. The other members, though possessed of wider administrative experience and efficiency, followed obediently the instructions given to them by the Resident and his underlings.[53] They owed their position and office to the British :

[50] Jammu and Kashmir Archives, No. 11 of 1896, His Highness Private Record.

[51] Transaction of Business of the Council, Memorandum, 1906.

[52] Jammu and Kashmir State Archives, No.23 of 1902.

[53] Jammu and Kashmir State Archives, No. 616 of 1896.

Is it known to the British Government that the so called Council of Kashmir all strangers to the country except the brothers, has as much power as a parcel of school boys to dictate to their tutor ?. All that has been done is to transfer the Government of Kashmir from one autocrat to another. In the very Constitution of the Council, that is, rules made for its guidance, it is ordered that their deliberations can be vetoed by the Resident in Kashmir. They are, hence, careful to pass only such resolutions as shall meet with his approval before hand. I have heard from their own lips, in as emphatic manner as could be expressed, that their independence is a farce and their power barely nominal. And, if any body desires it, I can show original documents issued to me, from which it will be seen that the Government of Kashmir by the present Council is nothing short of a myth and delusion.

It is further stated, as matter congratulation, that there is not even a single European member in the Council, and the Government is carried on entirely by natives of India. Will it be believed that the Maharaja in his letter to the Viceroy, of his own accord, asked for a European member to be nominated to his Council. He very wisely saw that a set of native subordinates appointed by the Government could only be the tool of the Resident. The fact is well known : the Government of the country is vested to all practical purposes in the Resident alone. Indeed it is not possible for any body to set foot in that country without a written permission from him. His will is law, he is king, and has surrounded himself with his own friends and proteges, and turned out many an old and faithful servant of the State. Nobody dare to open his mouth in that country, and if any one is so bold as to raise the most feeble protest, he is threatened with the "most serious consequences. . . . "[54]

After the deposition of Pratap Singh, the Gilgit Agency was

[54] William Digby, *Condemned Unheard, Kashmir Papers* P. 180-81.

re-established and Captain Durand was deputed to take charge of the Agency. He reached Gilgit on 27th July, 1889, and took over the control of the affairs there.[55] Meanwhile, communications between Srinagar and Gilgit were improved and a military road connecting Gilgit with Srinagar was hurriedly built. It will not be out of place to mention here that for years to come the transport on the Gilgit road was maintained by forced labour and thousands of people from Kashmir were commandeered to carry provisions, over the dreary passes, on to Gilgit for the British garrisons stationed there. The Agency soon fell into trouble with[56] the tribal principalities of Hunza and Nagar. The tribals, possibly at the instigation of the Russians, attacked the British positions and drove them out of the fort of Chalt and later Nomal. The British mounted their counter offensive in December, 1891. Hunza and Nagar were captured in two days and the British troops pursued the tribals as far as Misgar punishing them very heavily.

A month after the Maharaja was divested of his powers, he wrote an impassioned letter to the Governor-General of India wherein, he pointed out that he had been made a victim of misrepresentation and false charges had been piled on him to implicate him in a conspiracy against the British Government.[57] The Maharaja openly charged his younger brother of having manoeuvred to forge false evidence against him and hatch a plot to dethrone him. He wrote to the Governor-General:

> My chief enemy and in the present circumstances enemy of the State, who has taken a fancy to become the ruler of the Kashmir State, and who envies my position since long time, is, I am sorry to say, my own youngest brother, Raja Amar Singh. It is only now that I have

[55] Captain Durand's Report, National Archives of India, Foreign Secret F, May, 1889, No. 544-58; also Foreign Secret F, October 1889, No. 104.

[56] Gilgit Diaries, September 5, 1891, National Archives of India Foreign Secret F, January 1892, Nos. 220-35.

[57] Landsdowne to Cross, National Archives of India, Foreign Forntier A, January 1892, No. 127; A.G.R. Durand, *Making of a Frontier*, PP. 251-64.

found him out in his true colours, and all doubts as to his ill-motive have been removed. Since the very day I succeeded to the throne, he caused to set afloat all sorts of rumours against me, about my incapacity, insanity etc., etc.[58]

Still labouring under the impression that the powers of the Government would be restored to him the Maharaja supplian-tly pleaded for his rehabilitation. He appealed to the Governor-General to give him a fair trial for a period of five years to reorganise the Government of his State. He agreed to the appointment of Pandit Suraj Koul, Pandit Bhag Ram and Raja Ram Singh as his Councillors but he wrote to the Governor-General that he would banish Raja Amar Singh to his Jagirs "with full powers to add or diminish anyone." Concluding, the Maharaja wrote:

If after a fair trial being given to me, I do not set everything (excepting the settlement Department, which is under the guidance of Mr. Lawrence, and which will not be settled within five years) right, and am found not to rule to the satisfaction of the Supreme Govern-ment, and my people within the prescribed time, your Excellency's Government is at liberty to do anything that may be considered advisable. In case this liberty is not allowed to me by the Supreme Government, and I have to remain in my present most miserable condition, I would most humbly ask your Excellency to summon me before you and I will be most happy to obey such summons—and shoot me through the heart with your Excellancy's hands, and thus at once relieve an un-fortunate prince from unbearable misery, contempt, and disgrace for ever.

In his communication the Governor-General told the Maharaja very politely that the Government of India was unable to accept the suggestions made by him. He advised the

[58] Pratap Singh to Landsdowne, May 14, 1889, *Kashmir Papers*, P. 241.

Maharaja to accept the decision of the Government of India with fortitude and forbearance. Ironically enough, the Governor-General wrote to the Maharaja:

> What I have said has reference to the past. For the future, let me earnestly entreat your Highness to show to the people of Kashmir, as well as to the Government of India, by bearing in a dignified manner the loss of power which you have sustained, and above all, by not associating yourself with local intrigues and conspiracies, or attempts to obstruct the Government, that you have not entirely lost the qualities of wise and prudent ruler. The settlement announced in Colonel Parry Nisbet's letter of the 17th April to the Prime Minister, is, as I have already pointed out to you, not necessarily a permanent one. Time will, however, be necessary if the finances of the State are to be restored to order, and the results of past maladministration effectually removed. Until this has been done, the present arrangement must certainly remain in force. When these good results have been achieved, it may be possible to give your Highness a larger share in the control of the public affairs of Kashmir. Much would, in such a case, depend upon your own conduct in the meanwhile. You cannot, therefore, govern yourself too cautiously, or be too careful in selecting your associates and confidants.[59]

The British intervention in the government and the administration of the State earned the Government of India considerable censure and disapproval both in India and at home. Most of the Indian Princes expressed concern at the turn the events had taken in Kashmir,[60] More to placate the ruffled tempers in India and at home, the Government of India adopted a measured strategy to rehabilitate Pratap Singh and effected certain changes in the constitution of the Council. In 1891, the Council was reconstituted and the

[59] Viceroy to the Maharaja, *Kashmir Papers*, p. 255.

[60] William Digby, *Condemned Unheard; Amrit Bazar Patrika*, January 30, 1890; *Lanshdowne and the Maharaja*, London Times, 7th September 1889.

Maharaja was offered the Presidentship of the Conucil, which the Maharaja readily accepted. Raja Amar Singh retained the office of the Prime Minister.[61] The reconstitution of the Council was, however, a procedural change and did not materially effect the position of the Maharaja. The Council continued to function under the close scrutiny and strict supervision of the Resident.

In 1896, further modifications were introduced in the procedure of business of the Council. The Maharaja was entitled to receive references made to him by the individual members of the Council for report and disposal. The Maharaja was also empowered to send for proceedings finally disposed of by the members and in case, he did not agree with any decisions taken, refer the cases back to members concerned for reconsideration.[62] Possibly, apprehensive that the Maharaja would use the small measure of initiative given to him to his advantage, the Resident lost no time to tighten his control on the Council and thus circumvent the powers granted to the Maharaja. Orders were immediately issed by the Resident in accordance with which the members of the Council were required to prepare a synopsis of the business conducted by them outside the Council, showing the important cases disposed of by them, the decisions taken by them on the suggestions made by the Maharaja and the Irshads issued by him. The orders of the Resident also required that the synopsis prepared by the members were forwarded to him alongwith the proceedings of the Council after the Maharaja had considered them and signed them.[63] The Resident accordingly sent instructions to the Council and wrote:

> That his experience during the last four months of the working of the State Council has convinced him that certain modifications, in the system which has prevailed

[61] Papers Relating to Procedure of business in Council, Jammu and Kashmir State Archives, No 49 of 1889.

[62] State Council Resolution, 24th August, 1896, Jammu and Kashmir State Archives, 1889, No 49.

[63] Proceedings of the meeting of Jammu and Kashmir State Council, Srinagar Dated 24 August, 1896. Jammu and Kashmir State Archives, 1889, No. 49.

of late of conducting public business, are necessary if the work is to be carried on in accordance with the orders of the Government of India. In the first place, the Resident considers that all petitions presented to His Highness the Maharaja should be referred by him to the member incharge of the department concerned for disposal and report, if necessary. His Highness would, of course, be at liberty to send for record of a case finally disposed of by the member in charge, and if he saw reason for not concurring in the decision given, to refer the matter to the Council. But the Resident strongly deprecates any interference with the ordinary course of business dealing with cases, as leading to waste of time and to irregularities in procedure. :

The next point in which an improvement on the existing practice is called for, is that the Resident should have more opportunity of observing the inner working of the various departments for this purpose. He is of the opinion that each member in charge of a department should prepare a synopsis of the business conducted by him outside the Council, showing the important matters disposed of by him, the action taken by him on suggestions made on Irshads issued by His Highness the Maharaja.[64]

Restrictions were also imposed on some of the prerogatives, which had been reserved to the Maharaja in 1889, and he was barred to award any khilats and donations exceeding a value of twenty thousand rupees annually to private persons by direct Irshad. The Maharaja was also barred to make any grants of Nazool property or any other State-property in Nazarana except by a formal resolution of the Council and the concurrence of the Resident. The Resident also tightened his control over the function of the Council by ordering that the members of the Council reserved all questions for the views of the Resident, with regard to which the Council was forbidden to take final action till the Resident had not given his orders. The Resident also ordered that the appointments and dismissals of public servants be strictly regulated according to

[64] *Ibid,*

the procedure laid down and sanctioned by the State Council under its rules. The Council dutifully complied with the instructions of the Resident and passed a resolution giving effect to the orders received from him.[65]

Meanwhile the Maharaja made another of the many representations which he preferred to the Government of India pleading for the restoration of powers to him. In 1905, the administration in the State was reshuffled. The Council instituted in 1889, to run the Government of the State in 1889 was abolished and its powers were restored to the Maharaja. A number of restrictions were however, placed on the Maharaja. The Government of India retained complete control over the finances of the State, the armed forces, taxation, Jagir grants, appointments to administrative services and the foreign relations. The powers of general supervision and control the Resident had come to acquire, were left with him unaffected and intact. The restoration of the powers to the Maharaja was subject to the following conditions:

(i) The Maharaja was to exercise his powers on the advice of the Resident and follow the advice whenever it was offered to him by the Resident;
(ii) The annual Budget of the State was to be prepared and passed in consultation with the Resident and any expenditure, not provided for in the Budget, was not to be incurred without the approval of the Resident;
(iii) No reappropriation of funds exceeding ten thousand rupees was to be made without the sanction of the Resident;
(iv) Each departmental budget estimate was to be submitted to the Minister-in-Charge of the Deparment, who, after consultation with the Maharaja and the Resident, was to submit it to the Maharaja for his final approval;
(v) The Ministers were to be appointed after the approval of the Government of India had been secured;
(vi) The appointment of the Minister-in-Charge of the

[65] *Ibid.*

Foreign Department of the State was to be made subject to the condition that the person appointed the Minister-in-Charge of the Department was acceptable to both the Maharaja and his Prime Minister;

(vii) The business of the different departments was to be allocated by the Government of India;

(viii) The Maharaja was to have the power to veto or alter any orders passed by the Heads of the Departments and was empowered to call for and revise any proceedings of any department through the Minister concerned;

(ix) The Ministers were to have general control of the departments put in their charge and were to be the channel of communication between the departments, the Resident and the Maharaja;

(x) The Chief Revenue Officer, the Chief Judicial Officer, the Chief Engineer Public Works, the Engineer-in-Chief Railways, the Settlement Commissioner, the Accountant General, the Superintendent of Customs and Excise and the Director of Sericulture were to be appointed or removed with the concurrence of the Government of India;

(xi) The appointments and removals of Gazetted Officers of the State were to be made by the Maharaja on due cause shown;

(xii) The rules of business and the "Standing Orders" in force were to be adhered to until any necessity for their modification was shown, with the exception that all matters hitherto referred to Council were to be referred to the Maharaja through the Prime Minister;

(xiii) An English translation of the proceedings of the Council, orders of the Maharaja or the Ministers, was to be sent to the Resident in the following matters;

(a) Orders which modified the budget finally passed by the Maharaja;

(b) Orders which involved alienation of revenue or remission of taxation;

(c) Orders which involved the appointment and removal of the Gazetted Offiicers;
(d) Orders affecting the Railway Department and the Engineering Department;
(e) Orders passed in regard to the Settlement Department;
(f) Orders passed on the proposals made by the Sericulture Department;
(g) Orders pertaining to the Administration of the Frontier; and
(h) the orders issued in regard to annual or periodical contracts given by the State.

(xiv) The existing arrangements in regard to the allowance enjoyed by the Maharaja from the State revenue was to continue unchanged;
(xv) No existing resolution of the State Council was to be cancelled or modified until final orders to that effect were passed by the Maharaja in consultation with the Resident; and
(xvi) The powers of the Minister and the Heads of the Departments and the regulation of work between the various departments, defined by the State Council resolutions, were not to be changed until the necessity for such change had been established.[66]

The reorganisation of the government, apparently restored to the Maharaja, the position be enjoyed before he was deposed in 1889. Formally, the Maharaja was returned the powers of the government and administration, but actually the essential control over the affairs of the government was retained by the Government of India and their agent in the State. The powers, the Maharaja was to exercise, were subject to the crippling conditions that he would follow the advice of the Resident whenever it was offered to him. Evidently, the Resident was hardly expected to leave any initiative with the

[66] Note on New Arrangements for the Administration of Jammu and Kashmir, Documents relating to the abolition of the State Council, Jammu and Kashmir State Archives, 1905 : File No. 15, of 1905,

Maharaja. Virtually, therefore, the Resident continued to hold the reigns of power. The budgetry process the kharita laid down, did not effect the control, the Resident and the Government of India exercised over the finances of the State. The Maharaja was barred from making any changes in the rules of the conduct of business laid down by the State Council. The power to appoint the Prime Minister and the other major officials vested with the Government of India, left in tact the control, the Government of India exercised over the administration of the State.

Raja Amar Singh, about whose continuation in office, there was little doubt, had not given up his efforts to push out the Maharaja. Pratap Singh was heirless and favoured adoption and that sharpened the differences between him and his brother. The British played one against the other. Amar Singh was their protege and their accomplice and in possession of the highest administrative office of the State, he was bound to outweigh the importance of the Maharaja who remained relegated into the background. For obvious reasons the British were in no mood to change the arrangements and in fact, were not prepared to remove Amar Singh from the position of precedence he enjoyed in the State.[67] The Maharaja was bullied and harrassed by both, the Resident and the Prime Minister. Amar Singh spared no effort to undo the Maharaja and assume the throne himself. The Resident and the other British officials goaded him on. In 1892, another plot was hatched against the Maharaja and proceedings were instituted against him with the Resident on the allegation that he had entered into a conspiracy with one Pandit Nabh to get Amar Singh murdered. Letters and a telegram, alleged to have been exchanged between the Pandit and Pratap Singh, were produced before the Resident. The action, however, failed. On his part the Maharaja preferred numerous representation to the Government of India against the Resident and his brother. The government of India, however, ignored his protestations. The Resident, on his part, did not spare the Maharaja. In one of the many insulting letters, the Resident wrote to the

[67] National Archives of India, Foreign Secret-I, September, 1908, Nos. 27-30.

Maharaja[68] :

> It is essential that your Highness should recognise the obligations as distinguished from the privileges, of a hereditary ruler. Your Highness had advanced untenable claims to the exercise of unlimited powers as absolute owner of the State, and you have exercised the full powers, in respect to some of the forests. The ruin your Highness has permitted to be wrought in these particular forests must be regarded as an index of your fitness for exercising unrestricted authority. Your Highness does not appear to have learnt that powers entail responsibility. It would be impossible to countenance your dealings with the Kashmir State, with all its wealth and resources, as a toy which your birth-right entitles you to break or spoil at your choice[69].

In 1908, Pratap Singh wrote to the Government that Amar Singh be removed from his office. The Maharaja suggested the appointment of a British official in his place.[70] The Government of India, shelved the proposal. The Maharaja, however, insisted on the removal of his brother and requested for the permission to adopt a son. The suggestions made by the Maharaja did not find favour with the Government of India. In desperation, the Maharaja wrote to the Resident that he could no longer carry along with his Prime Minister and in case the Government of India did not consider it feasible to replace him, they should proclaim him the Maharaja. He wrote:

> If not withstanding his character and selfish ambitions and bad attitude towards me, he is considered indispensable for the State, then the Government may declare him straightway the ruler of the State in place of me and order me

[68] Jammu and Kashmir State Archives, File No. 616, His Highness Private Record, September 4, 1896 ; also file No. 13, 1908.

[69] Talbot to Maharaja January 5, 1889, quoted by F. M. Hassnain in *British Policy Towards Kashmir*.

[70] Jammu and Kashmir Archives, No. 13, 1908, His Highness Private Record.

to clear out.[71]

The Resident gave little consideration to what Pratap Singh wrote. Possibly amused at the distress and discomfiture the Maharaja suffered, and to add insult to injury, the Resident advised the Maharaja to leave the Chief-Minister "free as the Emperor leaves the Prime Minister of England free to perform all the minor duties of a Chief-Minister" and "perform the larger and the more important functions of a Ruler" himself.[72]

Raja Amar Singh died in 1909 and the long feud that had plagued the dynasty after the death of Maharaja Ranbir Singh came to an end. Pratap Singh was left to himself to make the best of the situation and reclaim the authority he had lost. The British, however, snatched the opportunity from his hands and continued to obstruct the Maharaja[73] in the exercise of his powers.

In 1914, the Government of India extended certain concessions to the Maharaja in respect of the financial control they still exercised in the State. The Maharaja was empowered to order the appropriation of the following expenditures without the sanction of the Resident, provided that the appopriation was approved by the Accountant General:[74]

(a) proposals for non-gazetted appointments below Rs. 100 each;
(b) proposals to alter the pay of individual appointments within Rs. 100 per month, based upon administrative and financial grounds and not upon personal grounds;
(c) Proposals within the limit Rs. 5000/- in each claim of all house rents, travelling allowances and charge allowances;

[71] *Ibid.*

[72] *Ibid.*, Francis Young Husband to Pratap Singh.

[73] Jammu and Kashmir State Archives, Political Department Records, 1914, No. 91/R/215.

[74] Jammu and Kashmir State Archives, Documents relating to the Abolition of the State Council, 1905,also Political Department Records, 1914, No. 108-E.

(d) Arrear claims within the limit of Rs. 5000/- in each individual claim;
(e) Extra grants within the limit of Rs. 3000/- for individual specific works and objects;
(f) changes in sanctioned establishments within the limits of Rs. 3000/- ; and
(g) the proposals for the grant of scholarships in civil, medical and public works, for education in India, upto a limit of Rs. 25/- in each individual case.

In October 1918, Maharaja Pratap Singh made another representation to the Government of India appealing for reconsideration of his case and restoration of the other powers of Government to him. In May 1919, the Government of India agreed to introduce a few more procedural changes in the Government of the State. The Maharaja was permitted to exercise the powers of sanction, veto and revision in all cases within the frame work of the existing rules for the transaction of the State business. The Resident's approval in respect of tendering his advice was to be obtained before the proposals were submitted to the Maharaja; the budget estimates were to be prepared by the Commander-in-Chief and Ministers in consultation with the Accountant General and forwarded to the Chief Minister, who after having consulted the Maharaja and secured the advice of Resident was to submit them to the Maharaja for his final sanction and the fortnightly synopsis of the proceedings and orders, passed by the Maharaja, were in certain cases no longer required to be submitted to the Resident.[75]

In September 1920, the Maharaja again appealed to the Government of India for the restoration of the powers which were still exercised by the Resident. He wrote to the Governor General :

> It was in the year 1891 that a Council of administration was constituted with myself as the Resident to administer my States of Jammu & Kashmir. It lasted for fourteen years until 1905, when certain enhanced powers were

[75] Bannerman to the Chief Minister, Jammu and Kashmir, 28th May, 1919.

permitted by His Excellency Lord Curzon, the then Governor-General and Viceroy of India, though a number of limitations were placed on my powers. Nearly fifteen years have gone by, and the enhanced powers have been exercised by myself in a perfectly satisfactory manner. In 1914, the Great European war broke out, and the services of a variety of description were rendered by me as a Ruler of my State, which have more than once been recognised and appreciated. During the continuance of war, I did not consider it advisable to place before Your Excellency the present representation. Now that the war is over I feel that I ought to labour under no embargo, reservations and limitations on the full exercise of my hereditary powers as a Ruler of my State. It certainly pains me to reflect that among the big States in India mine is the only case which is an exception to the status and powers which a Ruler of a State possesses. There has never risen an occasion to point out a single instance of abuse or misuse of my powers such as I have possessed hitherto, and pardon my remarking that it is a mystery to me that a Ruler who is fit to wear the Most Exalted Order of the State of India, the Indian Empire and the British Empire conferred on him from time to time within the last 15 years, who has recen tly been the recipient of the highest degree of L.L.D. conferred on him by the learned board of the Senate of the Punjab University, who is the highest Judicial and Revenue authority in his territories having powers of passing capital punishment independently and whose work of administration should from time to time be commented upon favourably by the paramount power, should for some reason or another unknown to him be constrained to labour under certain disabilities in the performance of his functions, powers and duties as a Ruler of a State second to none in point of importance loyalty and enthusiasm for the welfare of his subjects. Whatever may have been the reasons for imposing restrictions on my rights and powers as a Ruler, I am sure experience will have by now proved that it is high time that restrictions be now removed after my successful career of administering my State for a long

number of years.[76]

The Government of India finally relented and agreed to restore the powers of the government to the Maharaja, provided the Maharaja agreed to give a confidential undertaking that:

(i) the advice of the Resident would be accepted by the Maharaja whenever it was offered;
(ii) the Resident would be informed of any important changes made in the existing rules and regulations; and
(iii) the Resident would be kept[77] informed about the frontiers.

The Maharaja accepted the conditions and agreed to give the confidential undertaking demanded by the Government of India.[78] On 4th February, 1921, Pratap Singh was restored the powers of the government[79].

The same year, the Maharaja ordered the consolidation of the existing laws and regulations in the State. An important measure, by virtue of which law and procedure with regard to the High Court was regularised, was promulgated by him.[80] Subject to the control and judicial powers exercised by the Maharaja, the High Court existing in the State, was retained as the highest court of appeal and revision.[81] The general superintendence and control over all other civil courts was vested in the High Court and the High Court was empowered to visit and inspect the proceedings of the subordinate courts and give such directions in matters not provided by law as were found necessary to secure the administration of Justice.[82] The High Court was authorised, on its own

[76] Kharita from Pratap Singh to Governor General of India, 18th September, 1920.

[77] Bannerman to the Maharaja, 26th November, 1920, Jammu and Kashmir Archives, No. 104 of 1920.

[78] Maharaja to Bannerman, *Ibid.*

[79] Chelmsford to Maharaja, *Ibid.*

[80] Regulation No. XLVI of Samvat, 1977, Jammu and Kashmir Civil Courts Regulation.

[81] Jammu and Kashmir Civil Courts Regulation, Sec. 3.

[82] *Ibid.*, Sec. 7.

notion or the application of party, to withdraw any proceedings pending in any subordinate court for disposal, provided that such transfers were not effected in cases under sections 24 and 141 of the Code of Civil Procedure.[83]

The High Court was to have a Registrar and was empowered to appoint ministerial officers for the administration of justice and for the exercise of powers conferred on it by the Regulation. Powers were vested with the High Court to suspend or dismiss any ministerial officer from his office.[84] The High Court was also empowered to make rules[85] with regard to the following:

(a) providing for the translation of any papers filed in the High Court and copying and printing of any such papers or translations, and requiring from the persons at whose instance or on whose behalf they were filed, the payment of the expenses thereby incurred;
(b) declaring what persons would be permitted to practise as petition-writers in the Courts of the State, regulating the conduct of business by persons so practising, and determining the authority by which breaches of rules under this clause would be tried;
(c) determining in what cases legal practitioners would be permitted to address the court in English;
(d) prescribing forms for seals to be used by those courts;
(e) regulating the procedure in cases where any person was entitled to inspect a record of any such court or obtain a copy of the same, and prescribing the fees payable by such persons, for searches, inspections and copies;
(f) conferring and imposing on the ministerial officers of the subordinate courts, such powers and duties of a non-judicial or quasi-judicial nature as it found necessary, and regulating the mode in which powers and duties so conferred and imposed would be

[83] *Ibid.*, Sec. 38
[84] *Ibid.*, Sec. 6.
[85] *Ibid.*, Sec. 8.

exercised and performed;

(g) prescribing forms for such books, entries, statistics and accounts as it deemed necessary to be kept, made or compiled in the subordinate courts or submitted to any authority;

(h) providing for the inspection of the subordinate courts and the supervision of their working;

(i) regulating the exercise of the control vested in the High Court by section 35(4) of this Regulation; and

(j) regulating all such matters as it would deem fit, with a view to promoting the efficiency of the judicial and ministerial officers of the Courts, and maintaining proper discipline among the officers.

The High Court was vested with original and appellate jurisdiction. The Court was vested with the power to remove and to try, as a Court of extraordinary jurisdiction[86] any suit falling within the jurisdiction of any subordinate court in case that was deemed necessary. The High Court was also authorised to grant probates of testaments and administer properties belonging to persons dying intestate.[87] The appellate jurisdiction of the High Court extended to appeals in all decrees and orders of the District Judges or Additional Judges exercising jurisdiction in the first instance.[88]

REFORMS REGULATION

After the restoration of powers to Pratap Singh, the Maharaja drew up a scheme for the reorganisation of his government and submitted it to the Government of India for approval.[89] The Maharaja proposed the appointment of a Council of Ministers to conduct the administration of the State, the institution of a Legislative Assembly and the constitution of a

[86] *Ibid.*, Sec. 10 (2).

[87] *Ibid.*, Sec. 12.

[88] *Ibid.*, Sec. 4 and 33.

[89] Shri Pratap Reforms Regulation, Jammu and Kashmir State Archives, File No. 13 of 1895.

High court of Judicature. The Government of India, possibly frightened at the prospect of finding a representative political instrument instituted in the State, hurriedly turned down the proposals made by the Maharaja. They however, accepted the part of the scheme which envisaged the reorganisation of the Council and the establishment of a High Court of Judicature. The scheme was embodied in the Sri Pratap Reforms Regulation which was promulgated by the Maharaja in January 1922.

The Reforms Regulation provided for a State Council to aid and assist the Maharaja in the conduct of the government of the State. The Council was constituted of the following members[90]:

1. Commander-in-Chief and the Senior Member
2. Foreign Member
3. Revenue Member
4. Law Member
5. Home Member
6. The Member for Commerce and Industries

Provisions were included in the Reforms Regulation by virtue of which the Maharaja's nephew and the heir-apparent, Raja Hari Singh was appointed the Commander-in-Chief and the Senior Member of the Council. In fact, this was what the Government of India had insisted upon. Hari Singh was secured a position of precedence over the other Members of the Council. The Foreign Member was placed next to him and the other Members of the Council according to their seniority. The Members of the Council were appointed by the Maharaja and remained in the office during his pleasure. Provisions were included in the Reforms Regulation for the appointment of a Secretary to the council and a secreterial establishment to conduct the work of the Council. The Maharaja appointed himself, the President of the Council.

The Reforms Regulation provided for a broad division of the subjects of the government into reserved and non-reserved subjects. The reserved subjects were retained by the Maharaja for his personal discretion and disposal and exercised

[90] *Ibid.*, Order No. 105-C dated 24th January, 1922.

authority with regard to them without any reference to the Council or any other authority appointed by him. The reserved subjects were.[91]:

1. Matters bearing upon the relations between His Highness the Maharaja and the British Government and the Feudatory Chiefwithin the State;
2. matters relating to prerogatives, rights, powers, duties or privileges of the Maharaja or his successors;
3. matters relating to the management and control of the household of the Maharaja or his successors;
4. matters relating to the rights, privileges, easements, assignments and gifts and allowances of the Ruling Family; and
5. the matters regulated by treaties or formal agreements now in force or which "may hereafter be entered into by His Highness the Maharaja with the British Government and the Feudatory Chiefs of the State".

The powers to administer the non-reserved subjects were vested with the State Council.

All matters, which, under the existing constitution, require orders of His Highness the Maharaja and cannot otherwise be dealt with by any or any other authority under powers delegated to him by virtue of any law, rule, regulation or practice sanctioned by His Highness, shall in future be submitted to His Highness in the Jammu and Kashmir Council, with the exception of the subjects reserved specially for final disposal of His Highness.[92] The decisions in the Council were to be taken by a majority of the members subject to the concurrance of the Maharaja who reserved the power over-rule any decisions the Council took if he deemed that necessary.

The Reforms Regulation envisaged provisions for the re-constitution of the High Court of Judicature in the State. The

[91] *Ibid*, Order. No. 106-C dated 24th January, 1922.
[92] Order No. 105, dated 24th January, 1922, Sec. 6.

High Court was constituted of Judges appointed by the Maharaja for a term which was also determined by him. Subject to the judicial powers exercised by the Maharaja, the Court was vested with original and appellate jurisdiction in civil and criminal matters which the High Court in the State exercised under Sri Pratap Consolidation Regulation and the Code of Civil Procedure and other laws in force at the time. The general superintendence and control over all other courts in the State was vested in the High Court. The Court was empowered to visit and inspect the proceedings of the subordinate courts and give such directions to them in such matters as were not provided for by law to secure the administration of justice.[93]

Though the Maharaja was restored the powers of the government and a new administrative organisation envisaged by the Reforms Regulation, was inaugurated in the State, the intrigues to undermine his position did not end. Raja Hari Singh, the Senior Member of the Council, who had cultivated the favour of the British officials in the State, strove hard to contain the Maharaja and assume the control of the administration. Hari Singh demanded immediate decentralisation of powers, which he alleged were still centralised by the Maharaja, and the delegation of wider and more effective authority to the council.[94] He wanted to secure the powers of the government for the Council where he enjoyed the dominent position and push out the Maharaja. The Resident and the other British officials, who were indebted to the Raja for numerous favours and personal gratifications, gave him their wholehearted support. Once again Pratap Singh was driven to the wall. In 1923 the Maharaja was advised by the Resident to relinquish the office of the President of the Council and appoint Hari Singh in his place. Pratap Singh stubbornly refused to countenance the suggestion.[95] On further pursuasion, however, the Maharaja agreed to abstain from attending the meetings of the Council except when important matters

[93] Sri Pratap Reforms Regulations, No. IV, 1878.

[94] Jammu and Kashmir State Archives, His Highness Private Record, No. 32 of 1923.

[95] *Ibid.*

were discussed.[96] In 1924, the Maharaja was finally instructed to stop attending the meetings of the Council. Pratap Singh was at the fag end of his life. Like a helpless spectator, he had watched the great tragedy enacted right before him all along his life. Broken and little hopeful that his forty year long struggle would earn him a reprieve in the end, he yielded.[97] A new Constitution Act was promulgated and fresh provisions were made with regard the Council and its function. Raja Hari Singh became the President of the Council and in consequence assumed unrestricted powers of the Government.[98]

In accordance with the provisions of the new Constitution Act the reserved subjects were redefined. The discretion and the initiative of the Maharaja to exercise these powers was, curtailed by the special procedure, laid down for the administration of the reserved subjects. Matters pertaining to the armed forces were to be submitted to the Maharaja by the Commander-in-Chief of the armed forces. Matters pertaining to the other reserved subjects were to be submitted to the Maharaja by the Members of the Council through the Senior Member. The reserved subjects were defined to include:[99]

1. Military;
2. Political matters affecting the peace and the good Government of the State;
3. Treaties and agreements with the British Government;
4. Treaties and agreements with Feudatory Chiefs;
5. Relations between the Maharaja and the British Government;
6. Relations between the Maharaja and his Feudatory Chiefs;
7. Prerogative;
8. Titles;
9. Khillats, Tambols, Vartans and grants at His Highness disposal;

[96] *Ibid.*, Johnwood to Hari Singh, June 8, 1924.
[97] *Ibid.*
[98] Constitution of the Jammu and Kashmir State Council, and Rules of Business, State Council Resolution No. VI, dated 6th February 1924; Resolution No. 111, dated 25th July, 1924.
[99] *Ibid.*, Part II (Reserved Subjects).

10. Reception and entertainment of guests, allocation of Huts, Rest Houses and Guest Houses;
11. Toshakhanas;
12. Rakhs and Game preservation;
13. State representatives;
14. Baggikhana, Malmaveshi, Stables, Boats and Motor cars;
15. Jagirs and Muafis;
16. Devasthans and Dharmarth Trust fund;
17. Appeals which lie to His Highness under sections 34, 35, 36, of the High Court Regulation of Sambat 1978 and cases submitted to His Highness for confirmation of sentences under section 38 of the said Regulation;
18. Tasdiq-i-Wasiqajat; and
19. Police special reports such as accidents, riots, arrival and suspicious movements or actions of visitors.

The non-reserved subjects were to be administered by the State Council for which provisions were made by the Constitution Act. The Council was constituted of the following members:[100]

1. Commander-in-Chief, Senior and Foreign Member;
2. Revenue Member
3. Home and Law Member
4. Public Works Member
5. Finance and Police Member
6. Member for Commerce and Industries

Raja Hari Singh was appointed the Commander-in-Chief, Senior and Foreign Member of the Council.[101] Besides the armies of the State, the Senior Member of the Council was put in charge of the foreign affairs, treaties and agreements, relation between the Maharaja with his Feudatory Chiefs, political matters affecting the peace and good government of the State, receipt and despatch of all correspondence between the Maharaja and his officials and supervision of general administration,

[100] *Ibid.*, Sec. 5.
[101] *Ibid.*, Sec. 1.

prerogatives and powers of the Maharaja, the rights, privileges, gifts and allowances of the ruling family; its relations and connections, titles, salutes, ceremonials, tours and special occasions, frontier affairs, Residency and Residency correspondence, Khilats, Tambols, Vartans and grants at the Maharaja's disposal, reception, entertainment of guests, Guest-houses, Toshakhanas, Rakhs and Game preservations, state representatives, Baghikhana, Malmaveshi, stables, boats and motor cars.[102]

The Revenue Member was put in charge of land revenue, Jagirs and Maufis, revenue settlement, Co-operative Credit Societies, Agriculture, Horticulture, Veterinary, Devasthans and Dharmarth trust fund, Red Cross and the State property in British India. The Home and the Law Member was entrusted with education, public health and the Jails, Municipalities, Research and Libraries, Archeology and Museums, Manageries, Metereological Department, Judicial Department and Legislature, appeals which lay to the Maharaja from the decisions of the High Court, confirmation of sentences and Tasdiq-Wasiqa-Jat. The Member for Public Works was put in charge of the departments of Irrigation, Roads and Buildings, Electric Department, Mechanical Department, Telegraph and Telephone Departments. Finance, Treasuries, Accounts and Audits, Stamps, Kashmir Valley Food Control, Police, police special reports on riots, arrival and supervision of suspicious movements and actions of visitors, were put in charge of the Finance and Police Member. The Member for Commerce and Industries was put in charge of Forests, Commerce and Industries, Excise, Customs, Stationery, Industrial Education and the Printing Press.

The Constitutional Act also provided for the appointment of a Secretary of the Council. The Secretary was appointed by the Maharaja. The functions of the Secretary were enumerated by the Constitution Act in detail. His functions were :[103]

1. to receive all papers submitted to the Council;
2. to propose and circulate the agenda of business of the Council with the approval of the Senior Member and give notice of the meetings of the Council to the

[102] *Ibid.*, (Distribution of portfolios).
[103] *Ibid.*, Sec 2.

Members;

3. to return cases to the Members not submitted to the Council;
4. to record the proceedings of the Council;
5. to obtain Maharaja's consent for the resolutions of the Council;
6. to issue to the Members concerned the resolutions of the Council;
7. to furnish the Members with the printed copies of the proceedings;
8. to furnish the requisitions made by the Members of the Council;
9. to supervise the prompt despatch to the Council of reports from departments;
10. to supervise the working of the office and maintenance of the record;
11. subject to the appeal to the Council, to supervise and control the office establishment of the Council in the matters of appointment, suspension, leave, punishment and promotions;
12. to have the seal of the Council, maintain usual office registers, lists of pending references and the registers of the proceedings of the Council;
13. to furnish copies of resolution of the present and earlier State Council and the copies of the orders of the Maharaja on applications without a reference to the Council; and
14. to authorise fluctuating expenditure travelling allowances, bills of the subordinate establishments with the allotments provided.

The Constitution Act enumerated in detail the powers of the Council. Subject to the sanction of the Maharaja, the Council was vested with final authority in all matters which could not be dealt with by any Member or any other officer. The Council was also empowered to:[104]

1. frame and pass the annual financial statement before

[104] *Ibid.*, Powers of the Council.

the next financial year, to sanction the re-appropriation of any expenditure from one head to another, and to sanction all extra-grants not approved in the budget;

2. to sanction appointments and removal of gazetted officers, sanction leave, sanction pensions and allowances to them, call for records from any office through the Member-in-Charge and pass orders considered necessary sanction compassionate pensions, allowances for life to employees of the State or their dependents and hold departmental enquiries in the conduct of other officials;
3. to approve progress and other reports submitted by the Members;
4. to sanction acquisition of land under the Land Acquisition Act, over the powers delegated to the Revenue Member and grant of land under the State Waste Land Rules or under the House Building Rules;
5. to settle boundary disputes and questions relating to the Settlement Department over and above the powers delegated to the Member-in-Charge of the Department;
6. to sanction suspension and remission of revenue over and above the power delegated to the Revenue Member;
7. to decide appeals against orders issued by Members of Council in cases which were not included in the list of the reserved subjects;
8. to issue orders for the more efficient organisation and despatch of business in the various departments and make rules to regulate proceedings of any department and to settle matters pertaining to more than one department;
9. to revise orders issued by the Member-in-Charge of a department;
10. to call for and modify any proceedings in any Department and stay the execution of any order pending the final decision of the Council; and
11. to sanction schemes of general reform.

The Constitution Act also laid down rules for the conduct

of the business in the Council.[105] Every case to be submitted to the Council was to be sent to the Secretary of the Council by the concerned Member of the Council. A complete precis of the case was to be drawn up by the Member and he was required to record his opinion and the opinion of the Head of the Department subordinate to him in regard to the case. In every case, which involved financial issue the opinion of the Member-in-Charge of Finance was to be obtained before the case was submitted to the Council. Whenever a proposal was made to sanction, amend or repeal any regulation, law, order or notification, the opinion of the law member was to be obtained by the Member who had initiated the proposal. In every case which effected more than one member of the Council, the Member who submitted the case was to obtain the opinion of the Members directly concerned and the Head of the Departments effected.

Pratap Singh died in 1925. Hari Singh had cultivated the favour and friendship of the British officials in the State and his succession was smooth. During the period he was the Senior Member of the Council, the Raja had with astute understanding of the situation, placated the British officials of the Residency as well as those placed in the Government of the State. He had many reasons to have followed a policy of conciliation towards the British. Pratap Singh was heirless and the succession of the Raja depended upon the good will of the Government of India which could set his claims aside at the last moment. He was aware of the keen interest the Government of India had assumed in the northern frontier of the State after the first World War. He also realised the implications the national movement in India, which, by the time he succeeded to the throne, had entered the most decisive phase of its development.

Hari Singh was an intelligent man. But he was very stubborn. After he was well settled in his position, he gradually began to draw himself out of the burdens which had crushed his predecessor, while he maintained the cotrie of the willy British officials in favour, he assumed direct and effective control of the administration. In November 1925, he repealed the Constitutional provisions made by Pratap

[105] *Ibid.*, Rules for Conduct of Business.

Singh the year before and by a resolution in the Council promulgated new constitutional provisions for the government of the State[106]. In its broad aspects, general frame of the Government, the Constitution Act envisaged, did not differ from the structure, the Constitution Act of 1924. had underlined. The powers of the Government continued to be divided into the reserved and non-reserved subject.[107] The Maharaja retained exclusive control over the powers which were reserved for the personal control of the Ruler under the Constitution Act of 1924, except the following subjects which were transferred to the non-reserved sector :[108]

1. reception and entertainment of guests and management of the rest houses and guest houses;
2. Appeals to the Maharaja from the High Court;
3. Tasdiq-i-Wasiqajat; and
4. Police special reports with regard to accidents, riots, arrival and suspicious movements of the activities of the visitors.

The reserved subjects, retained by the Maharaja for his personal discretion and control, included, military, political matters, salutes, ceremonials, frontier affairs, Residency correspondence, khillats, Tombols, Vartans and grant, Toshakhana, Game-Preservation, State Representatives, Baghikhana, stables, boats, motor-cars, Jagirs and Maufis, Devasthans Dharmarth[109]. The procedure for the administration of the reserved subjects was defined by the new Constitution Act.[110] Matters pertaining to the army were submitted to the Maharaja for his commands by the Colonel-in-Command of the Army Staff. Subjects dealt with by the Foreign Department were submitted to the Maharaja for his commands by the Foreign Secretary. All other matters pertaining to the reserved subjects were submitted to the Maharaja for his orders by the State Secretary.

[106] Constitution of the Jammu and Kashmir State Council and the Rules of Business, State Council Resolution, No. 1, 28th November, 1925.
[107] *Ibid.*
[108] *Ibid.*
[109] *Ibid.*
[110] *Ibid.*

Civil and criminal appeals and applications and cases for confirmation of sentence of death or imprisonment for life were submitted to the Maharaja for his disposal by the Law Member.[111]

In accordance with the provisions of the Act, the Constitution of the Council was modified and the Council was constituted of the Maharaja and the following members:[112]

1. Members for Revenue
2. Member for Home and Law
3. Member for Finance and Police
4. Member for Commerce and Industry
5. Member for Public Works

The non-reserved matters were dealt with by the Council subject to the final sanction of the Maharaja.[113] The Maharaja himself presided over the meeting of the Council.[114] The quorum of the Council was fixed at four members and the decisions were taken by a majority vote. No resolution of the Council came into force unless it was approved by the Maharaja. In case of decisions which were taken by the Council in the absence of the Maharaja, the decisions were submitted to the Maharaja by the Council Secretary for his sanction. In case the Maharaja disagreed with any decision arrived at by the Council, the Maharaja was vested with the power to call for a meeting on the subject in his presence.

The allocation of the portfolios, provided for under the Constitution Act, 1924, was also altered and the non-reserved subject were redistributed among the members of the Council.[115] The office of the Senior Member of the Council was abolished.[116] The Constitution Act, 1924, provided for a Senior Member of the Council who presided over the meetings of the Council. The Maharaja in the Council retained for his personal control and discretion military affairs, foreign affairs, general adminis-

111 *Ibid.*
112 *Ibid.*
113 *Ibid.*
114 *Ibid.*
115 *Ibid.*
116 *Ibid.*

tration political matters effecting the peace and good government of the State. The Revenue Member was put in control of Land Revenue, Jagirs and Maufis, Revenue Settlement, Civil Veterinary, Devasthans and Dharmarth Trust Fund, Road-Cess, Patwar Fund and Chowkidar Fund, State-property in British India. Education, Medical Department, Jails, Muncipalities, Research and Libraries, Archaeology and Museums, Manageries, Meterology, Telegraph and Telephone, Judicial Department and Legislation, Civil and Criminal appeals and application for confirmation of the death sentences and imprisonment for life, Tasdiq-Wasiqajat which required the Maharaja's sanction were entrusted to the Member for Home Affairs and Law. Finance, Treasuries, Accounts Audit, Stamp, Kashmir Valley Food Control, Police and Police Special reports, arrival and reports of the suspicious movements of the visitors and co-operative credit was put in charge of Member for Finance and Police. The Member for Commerce and Industry was put in charge of Forests, Sericulture, and Mulbery Culture, Mineral Survey, Commerce and Industries, Excise, Customs, Stationary, Industrial Education, Printing Press, Agriculture and Horticulture. Roads and Buildings, Electric Department and Mechanical Department, were put in charge of the Member for Public Works.[117]

By assuming the presidentship of the Council, the Maharaja established direct supervision over the function of the Council. The Council retained the powers, it was vested with under the Constitution Act of 1924, with the exception that the powers to sanction appointments and the removals of gazetted officers, to hold departmental enquiries, to grant pensions and allowances, to sanction the acquisition of land over the powers granted to the Revenue Member under the State Waste Land Rules, and to decide appeals against the orders of the Members of the Council, were taken away from the Council.[118] With regard to the revenue appeals the following procedure was laid down:

> As regards revenue appeals, applications for review and revision, the opinion of the Law Member shall, where he agrees with the Revenue Member be treated as the decision

[117] *Ibid.*
[118] *Ibid.*

of the State Council, and the Secretary State Council shall inform the Revenue Member accordingly to enable him to take action. In cases in which the Law Member differs from the Revenve Member the papers shall be submitted to the Council by the Secretary Council with a detailed note for orders.[119]

A significant reform introduced by Hari Singh was the reconstitution and reform of the laws and regulations pertaining to the administration of Municipalities in the State.[120] Provisions were made for the establishment of Municipalities in the two major towns of Srinagar and Jammu, a step which signified a land-mark in the development of local government in the State. The Municipalities, though placed under severe limitations and strict administrative control of the government, were vested with powers with regard to constructions, water supply, sanitation and general welfare of the two townships of the State.

Another measure, the Maharaja adopted and in fact, the one unique in its nature, was the institution of Conferences in which the representatives from the rural areas met the Maharaja once a year, to apprise him of the conditions that prevailed in the villages and the needs and the difficulties the rural population faced.

In order to ensure that the legitimate grievances and needs of the agriculturists who form the vast majority of His Highness, subjects, may receive proper consideration, His Highness instituted the practice of annually inviting representatives from the various rural areas both in Jammu and in Kashmir to a Conference where they can personally acquaint His Highness with their needs and aspirations. Such matters as the opening of general and technical schools in particular localities, construction of roads and bridges, establishment of dispensaries, Post and Telegraph offices, extension of pastures for grazing and other matters, which, though more or less purely of local utility, are nevertheless important for the development of the country and the amelioration of the condition of the

[119] *Ibid.*

[120] A Note on Jammu and Kashmir State, 1927, Chapter, 11, p.4.

rural population, are discussed at these Rapresentatives' Conferences.[121]

In March 1927, the Constitution Act of 1925 was amended by the Maharaja. In accordance with the new constitutional provisions, all the powers of the government were taken over by the Maharaja under his personal control.[122] The Council of the Executive Members was abolished and replaced by a Council of Ministers constituted of,

1. Minister of Foreign Affairs and Trade
2. Minister for Public Works
3. Minister for Revenue
4. Minister for Home and Judicial[123] Affairs
5. Minister for Finance

A Minister-in-Waiting was appointed to function as the channel of communication between the Maharaja and his Ministers.[124] The Ministers were appointed by the Maharaja for such term and on conditions as he determined and as usual they remained in office during his pleasure. The Council was presided over by the Maharaja himself and he distributed the different portfolios among them. He personally determined the functions they were to perform and the ways and means by which the work of the government was co-ordinated. The Ministers were personally responsible to him. The Minister-in-Waiting was not entrusted with the work of any particular department and remained without a portfolio. The matters relating to the State Army were entrusted to a Military Board which was entrusted with the military administration. The Board was to function under the direct command of the Maharaja who was himself, the Commander-in-Chief of the State Armies. The duties and functions of the Board were defined by a separate Regulation. The deliberations of the Board were presented to the Maharaja for his command by the Colonel on the Staff. Certain other matters like the rights and

121 *Ibid.*, p. 8
122 Order No.3, dated, 11 March, 1927.
123 *Ibid.*
124 *Ibid.*

titles of the Ruler and the Ruling Family, relations with the Paramount Power and the Government of India, treaties, Jagirs and Maufis were reserved by the Maharaja for his personal disposal. Powers were reserved by the Maharaja to determine the subjects which were placed within the competence of the Council. The power which remained outside the competence of the Council, were submitted directly to the Maharaja for his commands. Matters of legislation and finance were referred to the Council of Ministers for advice. Meetings, where matters pertaining to legislation and finance were discussed, were also presided over by the Maharaja. The decisions of the Council were advisory and subject to the approval of the Maharaja.[125]

In 1928, Maharaja Hari Singh adopted a measure of considerable significance, when by a proclamation, he ordered the reconstitution of the High Court in the State.[126] The proclamation envisaged the establishment of a High Court of Judicature consisting of Chief Justice and two or more judges; one of them, was named the Judge of High Court and the Revenue Commissioner.[127] The Chief Justice and the other Judges were to be appointed by the Maharaja and were to hold office during his pleasure.[128]

Subject to the rules and regulations framed by the Maharaja, the general superintendence and control over all other courts was vested with the High Court and all other Courts were to function in subordination to it.[129] The Chief Justice and the judges of the High Court were empowered to visit and inspect the proceedings of all subordinate courts, and give such directions in matters not provided for by law, as were necessary to secure the administration of Justice. Subject to the sanction of the Maharaja and in consistence with the provisions of Code of Civil Procedure and the Code of Criminal Procedure, the Court was empowered to make rules to regulate its own practice, regulate the practice of the subordinate

[125] *Ibid.*

[126] Jammu and Kashmir Government Notification. Order No. 1, 25th March, 1928.

[127] *Ibid.* Sec. 1.

[128] *Ibid.*

[129] *Ibid.* Sec. II.

courts, provide for the forms to be used in the High Court and the subordinate courts for such proceedings, books, entries statistics and accounts deemed necessary, provide for the inspection of the subordinate courts and the supervision of their work and regulate all such matters as the Court deemed fit to promote the efficiency of its judicial and ministerial officers as well the judicial and ministerial officers of the subordinate courts.[130] In regard to the function of the subordinate courts the High Court was empowered to:

(1) make recommendations to the Maharaja with regard to the appointment of the District and Sessions Judges, Judges of the subordinate courts and Munsifs;
(2) transfer and grant leave to judges of the subordinate judges and Munsifs;
(3) subject to the sanction of the Maharaja, grant leave to the District and Session Judges and transfer them; and
(4) subject to the sanction of the Maharaja, confer civil and criminal powers on District and Sessions Judges, subordinate Judges, Munsifs, District Magistrates, and other officers exercising judicial powers.[131]

Subject to the sanction of the Maharaja, the High Court was authorised to appoint a Registrar and a Deputy Registrar and such other ministerial officers as were found necessary for the administration by the Court and for the exercise and performance of the powers conferred on the Court. The Court was authorised to determine the salary, allowances, promotions, leave, suspensions and the dismissal of such staff. Powers were vested with the Court to delegate such judicial, quasi-judicial and administrative powers to the Registrar or the Deputy Registrar as it deemed necessary.[132]

The High Court was also empowered to approve, admit and enrol Advocates, Vakils and Attorneys up to the limit fixed by the Maharaja. The Court was vested with the power to

[130] *Ibid.* Sec. 18.
[131] *Ibid.* Sec. 13.
[132] *Ibid.* Sec. 12.

make rules for the qualification and admission of such Advocates, Vakils and Attorneys.[133]

The High Court was vested with original jurisdiction in civil cases of ten thousand rupees or more in value. The Court was also vested with appelate jurisdiction in all civil matters, and for the purposes of all enactments in force for the time being, the Court was deemed to be the highest civil court of appeal and revision. The Court was empowered to hear and decide such revenue appeals as were specified by general or special orders of the Maharaja. The revenue appeals were to be heard by the Revenue Commissioner sitting alone and appeals against his decisions were to be heard by a bench of two other Judges of the Court. The Court was also vested with appellate jurisdiction in all criminal matters and was deemed to be the highest court of criminal appeal.[134] The High Court was vested with the power to try cases for the contempt of the Court.[135]

The Maharaja reserved to himself the prerogative of mercy and pardon and the power to remit, commute and reduce sentences conditionally or otherwise, call for the record of any case or proceeding whether pending or decided by the High Court and pass such orders as were "in accordance with the law and usage of the Realm and consonant with the dictates of justice, equity and good conscience."[136]

[133] *Ibid.* Sec. 19.
[134] *Ibid,* Sec. 6.
[135] *Ibid.* Sec. 20.
[136] *Ibid.* Sec. 23.

Chapter 3

National Movement

The British intervention ended the exclusiveness of the State. Not only did the British aim to reform the administrative structure of the State they also under took the economic reorganisation of the State. Before they took over the administration of the State, they had advised the Maharaja to introduce reforms in the land tenures, regularise land revenue assessment, and rationalise the taxes on industrial products like Shawl and Silk, reduce duties on imports and exports and abolish the restrictions on commerce and trade.[1] The British were, infact, motivated by two equally significant objectives. In the first place they sought to consolidate a ring fence of middle class interests around the dynasty which would work as a safeguard for the dynasty as well as a check on its wide and absolute monopoly in property. In the second place the British sought to secure control of the lucrative commercial operations in the State particularly those accross the northern frontiers. The British officials placed in the State or around it, had their

[1] National Archives of India, Foreign Department Proceedings, Secret. E, October 1886, No : 725.

own interests to serve and secure advantages and concessions for personal pecuniary benefit. A fresh revenue assessment had already been ordered by the Maharaja under the instructions of the Government of India, and Wingate, another of the many diehard English officials, who was as ignorant about the conditions prevailing in the State as any other Englishman was, was foisted on the Maharaja to report on the revenue administration of the State and process out a fresh assessment.[2] Infact, Pratap Singh had requested Sir Charles Aitchison, the Lieutenant Governor of the Punjab for a qualified native Settlement Officer. Sir Charles had recommended a couple of men and asked the Maharaja to make a selection between them. The Maharaja had then requested Sir Charles to make the selection himself expressing his preference for a Mohamaden Officer in view of the fact the population of Kashmir was mostly Muslim. Sir Charles had then made the selection and forwarded his recommendations to the Government of India for sanction. But Plowden, more to benefit Wingate, by no means an efficient and capable officer, and plague the Maharaja, had manoeuvred to get the Englishman appointed the Settlement Officer in the State[3]. However, before Wingate was able to complete his task he was replaced by a more capable Officer Sir Walter Lawrence. The main features of the new settlement were:

(i) The State demand was fixed for fourteen years
(ii) The payment in cash was substituted for payment in kind
(iii) The use of force and the employment of troops in the collection of State revenues was abolished
(iv) Beggar in land was abolished
(v) Occupancy rights were conferred on cultivators in undisputed land
(vi) The area of land held by privileged holders in excess to the area sanctioned to them was assessed at ordinary rates
(vii) Waste lands were entered in the Records as the Khalsa, but preferential rights for acquisition of such lands by

[2] J. C. Bose, *Kashmir and its Prince.*
[3] *Ibid.*

tenants were granted

(viii) Permanent but non-alienable hereditary rights were granted to those who accepted the first assessment

(ix) All land was carefully evaluated on the basis of produce, previous collection and possibility of irrigation

(x) The Rasum and other exactions were abolished and the rents and liabilities of the cultivators were defined.[4]

The reorganisation of the administrative structure was, more drastic. Most of the departments were placed under the supervision of British officials who modified the departmental organisation according to the lines laid down by the Government of India.[5] A development of far-reaching import, was the zealous effort, the British Official supported by Christian Missionaries, made to introduce English education in the State. The first school in which English education, according to recognised university syllabii, was imparted, was established by the Missionaries in 1881. English education was introduced in the schools, run by the Government in the State, in 1886. Within a decade a number of schools imparting education in English, were established in the provinces of Jammu and Kashmir. Within one more decade, the schools and the two colleges began to pour out a fairly good number of educated young men.[6]

The vigour and the ruthlessness with which the British reorganised the age old economic and social structure and the administrative and educational system in the State ended an epoch and founded a new generation.[7]

The process liberated hitherto unexperienced stresses and strains and gave rise to a fresh complex of economic and social relations. The most characteristic feature of the new pattern was the consolidation of a middle class flank of vested

[4] Jammu and Kashmir State Archives, No. 66-M of 1922.

[5] Progress of Education in Jammu and Kashmir, p. 122.

[6] M.K. Teng and S. Koul, Ideological Foundation of National Movement in Kashmir, Journal of Political Studies, Jullunder, September, 1971, p. 28.

[7] *Ibid.*

interests in land and trade and the emergence of rapidly widening class of educated young men. Many of the young-men found their way into the services of the State and thus cast in a new progressive sociological role assumed community leadership.[8] Most of them, however, failed to find any avenues of employment. The agrarian economic frame offered few prospects for the educated people. Except for the indigenous an not so prosperous small industrial establishments, a stable industrial structure did not exist in the State. Barrring the township of Jammu, where trade and commerce flourished due to the proximity of the commercial centres in the Punjab, the rest of the province was as poor as the Kashmir province was, where the economic activity centered round small trade in meagre and more often false surpluses in agricultural produce.[9] Imbibed by the liberalist tradition, which underlined the English education, and therefore, keen to find a place in the administrative organisation of the State and also because alternative opportunities of advantageous employment, in the other economic avocations were sparse, the educated young men developed a reactionary interest in the administrative services in the State. The State administration however, offered very restricted margin of employment. Most of the offices were filled by the Government of India from among its civil service cadres or filled by the Dogras on political and other considerations.[10] The British officials, who considered the Government in the State as their own preserve and managed to assume positions and roles for their personal benefit or utilised the distribution of employments as an effective instrument of patronage, paid little attention to the difficulties the educated youth faced. The clash of interests was inevitable. A deep sense of resentment was created in the people of the State against the British officials as well as those appointed by them.[11] A number of social and political associations, more important among them being the Dogra Sadar Sabha, the Mahajan

[8] M.K. Teng, Social Legislation in Kashmir, M.S. p. 189.

[9] *Ibid* p. 49.

[10] M.K. Teng and Santosh Koul, Ideological Foundations of National Movement in Kashmir, Journal of Political Studies, Jullunder, September, 1971, p. 29.

[11] Resolutions of the Dogra Sadar Sahba, 1912.

Sabha and the Muslim Youngmen's Association, were founded in the State. The objectives which underlined the programme of these organisations reflected the deepening frustration among the youngmen and their earnest desire to assume wider participation in the politics and the administration of the State.[12] The Dogra Sadar Sabha, founded in 1905, voiced disapproval of the domination of the State administration by the India Civil Service cadres. After 1910, the Sabha started a vigorous campaign for the reservation of administrative employments for the people of the State.[13] In Kashmir province the movement evoked greater response from the small Kashmiri Pandit community, which had a long academic and intellectual tradition and which produced youngmen educated in schools at a fairly rapid rate than the other communities in the State did.[14]

The emergence of a stable middle class and the spread of English education in the State had another and a more important aspect. The three provinces which comprised the State had little that was common among them. Kashmir was predominantly Muslim. Ravaged by centuries of oppression and ruin and for most of its history compelled to seclusion by its geographical location, it had settled down into atropheid forms of cultural stratification. Jammu Province, a part of the Sanskrit people of the Punjab, was inhabited by Hindus as well as Muslims the latter forming a majority in the Districts of Doda and Poonch. Ladakh was inhabited by Buddhists with a majority of Muslims living in Baltistan and was ethinically and culturally different from both the people of Kashmir and Jammu. The integration of these territories into a single political entity had obviously an inherent potentiality for conflict and concussion.[15] The early Dogras utilised the precarious balance of the social and cultural contacts, thus created to secure their position and in order to use the heirarchical gradations of these social patterns as instruments

[12] M.K. Teng and Santosh Koul, Ideological Foundations of National Movement in Kashmir, Journal of Political Studies, Jullunder, September, 1971, p. 31.

[13] *Ibid*, p. 31-32.

[14] *Ibid* p. 32.

[15] *Ibid.*, p. 32.

of political control, contributed, consciously or unconsciously, to the perpetration of these differences and divisions.[16] Alignments were secured by them with agrarian and commercial interests, the social strata with a superior role status and the different regional influences. The lower castes among the Hindus were secured by caste approbrium. The same processes were adopted by the Dogras to deal with the Muslims as well, but the Muslims remained impervious to their political pursuasion. Partly, it was because the Muslims were not graded into social levels like caste and therefore, no infra-instruments of social control could be built among them. Partly, it was because the Muslim middle class interests widespread in the Jammu province than in Kashmir, were not organised and therefore, exercised less influence over the Muslim masses. It was, however, mainly because the Muslim massess, as the prodominent majority, bore the brunt of Dogra absolutism and was therefore, far from content with the Dogra rule. Uncared for and neglected the Muslisms were isolated and as they turned inwards they fell into conservative extremism.

The middle class movement and the reactions articulately expressed by the middle class intellectuals, could neither rectify nor remedy these ills. The new class actually constituted an inseperable part of the Dogra political and economic frame and was therefore, geared to the perpetuation of these ills. What actually happened was that the middle class leadership broke up into regional and communal factions and liberated reactions which had not been experienced before. The objectives of the various faction were identical because each contested for wider permissibility, more concessions and greater opportunities of employment under the regime. Only the operatives differed. Gradually, however, as the contest among the different factions sharpened, the operatives assumed precedence over the objectives. The Muslim factions, extra-conscious of their role as the spearhead of a religious majority ruled by Dogra Rajputs, turned to feed on the seething discontent and distrust in the Muslim masses. As the mass involvement in the Muslim middle class movement increased, the objectives, the Muslim middle factions sought to achieve, were completely

[16] *Ibid* p. 32.

relegated to the background. The movement rapidly widened its scope and soon assumed the expression of an upsurge against the Dogras.[17]

Hari Singh was an intelligent man and perhaps for a while, sensed the danger the widespread discontent among the Muslims posed. On the occasion of his Raj Tilak, he tried to assuage the feelings of the different communities, particularly the Muslims and declared that his government would strictly adhere to a policy of equal protection to all people and remedy the discrimination that any of the communities in the State suffered. A number of concessions were announced under the Raj Tilak Boons,[17]particularly with regard to revenue assessment, grazing fees, cultivation of waste and fallow lands. The concessions with regard to fallow and waste lands were aimed to benefit the small land holders in the State. The reforms, though of considerable merit could hardly remedy the Muslim distrust. The Raj Tilak Bcons were by no means radical but nothing short of a drastic transformation of the political and economic structures could restore the Muslims their trust in the Dogra administration. On their part, however, the Dogra had to fulfil their own commitments. They were a part of the complex structure of the Princely States in India. Their discretion was circumscribed as much by the nature of their authority as it was by the interests they were supposed to serve. Beyond the Raj Tilak Boons, the Maharaja could not accomplish much, the Muslim distrust remained unremedied.

The reorganisation of the Government, Hari Singh undertook after his accession, was not in any manner a progressive measure. The Maharaja attempted to re-establish the pattern of the personal rule, the early Dogras had fostered, with absolute control over the government and its operation. To that extent his efforts were to undo what the Government of India had compelled Partap Singh to do. The sole purpose for the promulgation of the constitutional provisions in 1925, and their modification a year and half later, was to secure the centralisation of authority in his person. The constitutional provisions did neither aim at any reform in the State policies nor seek to streamline the processes of the Government. On

[17] Raj Tilak Boons Declaration, 1925.

the contrary the constitutional provisions promulgated by the Maharaja, sought to strengthen the frames which bound the people of the State to servitude. The Conferences of the Representatives were farcical in character for the people on parade at such congregations were the hosts of concession holders, Tazimi Sirdars, Jagirdars, landowners and village headmen who hardly represented anybody in their fiefs and localities. They vied with each other to ingratiate themselves with the Maharaja and his courtiers to secure their interests and earn approval of the oppression to which they subjected their people. The enthusiasm, with which the Conferences were inaugurated, was short lived and within a year they got defunct.

At the political level however, the measures taken by Hari Singh had wide ramifications. The concentration of authority, Hari Singh attempted to achieve, found little favour with either the Government of India or the British Officials in the State. In fact, the British officials were immediately deprived of the close control they exercised over a number of the departments of the State Government. They enjoyed unrestricted power and initiative to manage the affairs of the departments placed under their supervision. Each one of them had become a little despot in himself. Evidently they were indignant at the turn the events took after the accession of Hari Singh. By alienating the support and the sympathy of the Residency and the community of the British officials placed in the State, Hari Singh, perhaps, in wild excitement, pushed himself into direct confrontation with the Government of India. Hari Singh repudiated the secret commitments that his predecessor had given to the Government of India when powers were finally restored to Pratap Singh and he had undertaken that he would take the advice of the Resident in all important administrative matters and consult the Government of India whenever any changes were made in the policies of his Government with regard to the frontiers of the State. The action taken by Maharaja Hari Singh was significant because the repudiation of the commitments given by Maharaja Pratap Singh did not only end the technical jurisdiction the Government of India exercised in the State, on matters not provided for by any treaty or a subsequent Sanad, but brought to surface the fundamental question whether a secret commitment, given by

a Ruler of a Princely State to the Government of India, had any constitutional validity and whether such a commitment, bound a successor to the obligations the commitment imposed. In fact, many of the obligations, Maharaja Pratap Singh had undertaken, had no legal sanctity or constitutional validity and were not in any sense commitments of a constitutional nature. There was, therefore, no ground to admit that the commitments could bind a Princely State perpetually to obligations imposed by the Government of India. Any such precept or process prejudiced the Paramountcy. Maharaja Hari Singh had therefore, a patent right to refuse the concessions, his predecessor had given to the Government of India. The Government of India, was however, hardly expected to surrender, particularly in regard to the northern frontiers of the State, which had assumed fresh importance after the First World War.

GRIEVANCES AND COMPLAINTS

Early in 1931, an ugly incident occured at Jammu which allegedly involved interference by the State Police with the practice of recitation of Khutba after the usual prayers[18] by the Muslims. A few more incidents followed in quick succession. Tension mounted rapidly. The incidents brought the various Muslim interests and factions in the Punjab directly into the vortex of the development in the State.[19] A number of journals, both in vernacular and English, notable, among them being the 'Siyasat' 'Pasban' and the 'Muslim outlook' took up the cause of the Kashmiri Muslims, pleading for their deliverance from the Dorga rulers.[20] Most of these journals and Akhbars were patronised by the British to brow-beat the Maharaja.[21] A number of Kashmir Muslim Committees also sprung up all over the Punjab and a Central Kashmir Committee was constituted at Lahore to coordinate the work of the Committees and cannalise their

[18] Report of the Inquiry into disturbances in Jammu and its environs, 1932.

[19] Ranbir, Jammu, Vol. 3, No. 47, 48 (1927).

[20] *Ibid.*

[21] Rashid Taseer, '*Tehrik Huryat Kashmir*' Vern. Vol. I, p. 140.

efforts.[22] The Muslim Youngmen's Association in Jammu was also reorganised. Most of these movements and activities were inspired and guided by Ahmadiya cadres from Qadian.

The Jammu incidents evoked considerable response from the Muslims in the Kashmir province but their reaction was subdued. The apparent calm, however, did not last long. In June, one Abdul Qadeer, an Indian national, who had come to Kashmir with an Englishman, delivered a number of speeches to the Muslim congregations assembled in the Mosque of Shah Hamdan in Srinagar. Speeches were allegedly seditious and Qadeer was arrested. On July 13, while Qadeer's trial was in process at the Central Jail at Srinagar, a scuffle occured between a huge mob of Muslims, which had collected outside the Jail precincts, and a contingent of Dogra sepoys, specially commandeered to guard the Jail that day. The sepoys opened fire and twenty one people were killed.[23] Riots broke out in Srinagar and the troops were deployed to bring the situation under control. The Muslims in the province rose as one man against the regime, struck work, called themselves off from all business and shopping centres and in sullen resentment settled down to widespread passive resistance.

The Government of India, possibly in haste, threw away its caution and instructed the Resident to inform the Maharaja that the happenings in the State had evoked deep concern all over the country and in view of the 'Propaganda' being worked up on the frontier, at Simla and in India generally the Viceroy desired that the Maharaja requested the Government of India for independent outside assistance for a Commission of Enquiry or at least services of a Mohamadan High Court Judge to add to the existing Committees.[24] The Maharaja had instituted a Commission under the Chairmanship of Sir Barjor Dalal, the Chief Justice of the State High Court to enquire into the circumstances that had led to the Jail firing.[25] The Resident informed the Maharaja that the Viceroy was apprehensive that 'the findings of the present Committee, if local Mohamadans refuse to serve on it, would do little to allay the

[22] *Ibid.*

[23] Report of the Srinagar Riot Committee.

[24] P.N.K. Bamzai, '*History of Kashmir*', p. 716.

[25] *Ibid.*

agitation'. The Muslims had, infact, boycotted the Dalal Commission. In a long, but for all purposes, a wasteful communication, the Maharaja explained to the Viceroy the genisis of the entire crisis and assured him that the situation was expected to come to normal in a short time. The Maharaja, however, refused to accept the suggestions that outside assistance was necessary for an enquiry or a Muslim High Court Judge was needed to be associated with the enquiry in process. The Maharaja informed the Viceroy that the appointment of a Muslim Judge would damage the prestige of the State High Court. On August 1, the Resident conveyed to the Maharaja, the Muslim demand for an impartial British enquiry and advised him to meet a Muslim deputation from the Punjab which had sought to wait upon the Maharaja. The proposals were promptly turned down by the Maharaja.[26]

Maharaja, had by now, sensed the intentions of the Government of India. Intelligence had also reached him that the officials of the Residency and some of the senior British officials in his government including G.E.C. Wakefield, the acting Chief Minister, were deeply involed in the plot to undermine him. Wakefield was dismissed and whisked away across the State borders under close guard. The Englishman had joined the State Government during the reign of Maharaja Pratap Singh and had managed to cultivate the friendship of the Raja and after the latter had assumed the throne, secured for himself the office of the highest executive in the State. The new Prime Minister, Raja Hari Krishen Koul, opened negotiations with the Muslim leaders immediately after he joined the State Government. In the first week of August, the people detained and put under arrest, were released and the troops were withdrawn from Srinagar and the other major towns of the province. An agreement was reached between the Government and the Muslim leadership, which stipulated the suspension of the Muslim agitation on the assurance given by the Government that the Muslim demands would receive consideration of the Government after the enquiry instituted in the disturbances was completed.[27]

[26] *Ibid*

[27] Agreement between the Government and the Muslim Leaders,

The agreement was, however, shortlived. On September 21, 1931, the Muslim leaders in Srinagar were rearrested. The Muslims swung back into severe and violent reaction. An underground committee called the "War Council" was constituted to direct the agitation and massive demonstrations were once again staged all over the province. The Government struck back furiously. On September 25, the Maharaja promulgated the Burma Ordinance. Regular troops were again called out to maintain law and order. Trouble broke out in the townships of Sopore, Baramulla, Shopian and Anantnag, and at a number of places the troops had to open fire on angry demonstrators.[28]

Three days after, the Government of India delivered a peromptery note to the Maharaja, informing him that the Government of India took a serious note of what was happening in the State.[29] The Maharaja was warned of the possibility of Muslim"Jathas" and volunteers being despatched to the State in support of the Muslims there. The Government of India demanded:

(i) that definite and immediate steps be taken to remedy the more obvious grievances of the Muslims such as those pertaining to the ban on cow-slaughter, prohibition on Khutba and the Azan;
(ii) that a British Officer, deputed by the Government of India, be appointed to conduct an independent inquiry into the grievances of the Muslims in the State;
(iii) that a British Officer of the Indian Civil Services be appointed as the Prime Minister of the State; and
(iv) that Raja Hari Krishen Koul the Prime Minister and his brother Daya Krishen Koul be ordered to leave the State.

While the Muslim agitation in Srinagar was still in process, trouble broke out in Jammu where a number of Muslim volunteers from the Punjab operated to guide the Muslim movement. Sporadic disturbances occured all over the districts of Poonch and Mirpur where the Muslim population prepared feverishly

[28] P.N.K, Bamzai, "History of Kashmir", p. 718.
[29] *Ibid.*

for a major clash with the Government.[30] Meanwhile, information reached the Government that Ahrar volunteers were being organised to be sent to the State in support of the Muslim agitation. The developments in Jammu alarmed the Maharaja. Partly to placate the British and partly to draw out the bulk of the troops from Kashmir to meet the situation in Jammu, the Maharaja suspended the action against the Muslim agitators in Kashmir. On October 5, 1931, the Government announced a general amnesty. The military regulations and the martial law ordinances, imposed on September 25, were withdrawn and the State troops, which were still deployed in Srinagar and the other towns of the province, were recalled. All the political prisoners and the people detained for disobedience and the violation of the military ordinances were ordered to be released.[31] An announcement was made by the Government that the Maharaja would consider the complaints and the grievances of his subjects and would be pleased to receive any memorandum or representation that any class or community of his subjects would prefer to make. Within a few days a number of representations and memorials were submitted to the Maharaja by almost all the communities of the State.

A few days after, the "Ahrar Jathas" crossed into the State at a number of frontier posts in Jammu. The volunteers were organised in the Punjab by the Majlis Ahrar and came from almost all over India.[32] Actually the Ahrars, a nationalist volunteer corps, jumped into the fray, to drive out the Ahmadiyas, who had directed the Muslim agitation in the State and extend their influence over the nascent Muslim movement. The State Government, which could have suppressed the local troubles, was hardly in a position to cope with the situation created by the Ahrar intervention. Riots broke out all over the Jammu Province and in a few days the districts of Mirpur, Poonch and Rajouri were completely cut

[30] Report of L.N. Jardine, Special Minister, on the measures adopted for the restoration of law and order in the Mirpur Wazarat and Rajouri Tehsil.

[31] Command Order, Dated, 3rd October, 1931.

[32] Report of the Inquiry into Disturbances in Jammu and its Environs. L. Middleton, 1932.

off from Jammu.[33] The State Government stood by helpless. Finally, a shaken and disillusioned Maharaja, requested the Government of India for help and asked for the British troops to be sent to the disturbed areas to restore law and order. On November 3, 1931, the British troops were despatched to Jammu. On November 7, the Government of India promulgated an ordinance prohibiting the entry of the Ahrar volunteers into the State. Moulvi Mazhar Ali, the Ahrar leader, who had organised the Ahrar agitation was arrested and sentenced to two years imprisonment. On November 12, the Maharaja announced the appointment of a Commission to go into the grievances and complaints of the different communities in the State. Bertrand J. Glancy, a British officer, who had served in the State in different capacities, was appointed the Chairman of the Commission. The same day, the Maharaja ordered the institution of a Constitutional Reforms Conference to examine the feasibility of political reforms in the State. Bertrand Glancy was appointed the President of the Conference as well.[34]

The onslaught of the Ahrars and the events that followed, brought the Maharaja to his knees. The deployment of the British troops was a severe set-back for him. He had stubbornly refused to recognise that as an instrument of the British Colonial Empire in India, his decisions could be independent only to the extent they were in conformity with the interests and the operatives of the Empire. The Maharaja overlooked this historical fact. The British, however, put the heaviest premium on it. When the Maharaja ultimately yielded, much of the ground had slipped out from underneath his feet.

Muslim Conference

The Grievances Enquiry Commission was constituted of four non-official members representing the Muslims of Jammu

[33] Report of L.N. Jardina, on the measures adopted for the restoration of law and order in the Mirpur Wazarat and Rajouri Tehsil.

[34] Maharaja Hari Singh's order dated 24th November, 1931.

and Kashmir, the Hindus of Jammu and the Kashmiri Pandits.[35] The Hindus of Jammu withdrew their representative shortly after the Commission started its deliberations after the Muslim representatives insisted that the Hindu Law of Inheritance be taken up by the Commission for consideration.

The lines of approach the Commission laid down for the conduct of the enquiry and the focus of its investigation immediately cleared any doubts about the outcome of the enquiry. With great skill, the British Commissioner manoeuvred to secure the agreement of the other members of the Commission to the broad propositions about the way the Commission would conduct the enquiry and the sphere of State activity which the enquiry would cover. Apparently the enquiry was instituted to locate any communal and regional imbalances in the State and examine the effect such imbalances had on the welfare and progress of the different communities.[36] In reality, however, the Commission concentrated its efforts on the contest between the middle class factions for the concessions and opportunities the regime made available.

Besides the religious rancour and fervent zeal for communal domination, the more sizeable expression, which ultimately went into the making of the minutes of the Commission, was that of the articulate middle class interests embroiled in the struggle for survival. In fact, the British Commissioner took advantage of the manifest conflict which divided the middle class leadership in the State and glossed over the deeper implications of communal and regional imbalances, he was commissioned to locate.

The communal and regional imbalances were, in reality, an expression of the feudal economic and social organization and the heirarchical gradation of castes, creeds and religious denominations. These dissimilarities and gradations formed the ground work on which the regime was based. Bertrand Glancy, in fact, every Englishman, who had an opportunity to serve in any of the Indian States, knew this well and knew also

[35] Commission appointed under the orders of the Maharaja under the Chairmanship of B.G. Glancy to enquire into the grievances and complaints of the people of the State.

[36] *Ibid*, pp. 1-5.

that not only the Princes but the British as well, were committed to maintain these traditional forms of society. The British Commissioner did not find the conditions in the State worse than those prevailing in any other princely State of India or in any of the British Indian provinces. He struck a balance between the divergent demands made on him and presented a list of recommendations which were neither motivated by any genuine desire to secure political emancipation of the people in the State nor aimed to achieve their economic reconstruction. The main burden that Glancy bore for the Commission, was to confirm the present imbalances and sharpen the conflict between the different communities and the regional denominations in the State.

The Commission did not make any effort to examine the ruthless oppression the Muslim masses in the State were subject to, the crushing demands the State and the interests which fed on it, made on the vast masses of Muslim peasantry and the host of taxes and levies which were extorted from the people of the State, to fill the coffers of the Government. Bertrand Glancy, with delibrate intent, refused to make any reference to the abjectly primitive economic organization of the State, the wide-spread exploitation of the rural population by the landed aristocracy and usury and indebtedness which drove out the sap of toiling masses. The Commission, instead recommended the abolition of the Malikana[37] and the various grazing taxes, relaxation in the rules regarding the cultivation of the State-waste and the right of the land owners to cut walnut, chinar and mulbry trees.[38] The concessions were obviously aimed to benefit the landlords and did not give any relief to the vast majority of the peasants who held land in tenancy or worked on it as landless labourers. The Commission gave scrupulous attention to the question of State services and their distribution among the different communities in the State. The commission noted:

> All vacancies in the State services should be properly advertised and practical steps should be taken on the lines indica-

[37] Report of the Grievances Enquiry Commission, p. 51.
[38] *Ibid.*

ted in the report to see that all communities receive their fair share of the government appointments. In the case of local appointments it is recommended that the inhabitants of the district concerned should be recruited as far as may be possible.[39]

In November, 1932, the Muslim leadership called a general convention of the Muslims of the State in Srinagar.[40] On October 16, 1932, the last day of the convention, the Jammu and Kashmir Muslim conference was founded. Sheikh Mohamad Abdullah, who had led the Muslim intellectuals and directed the Muslim agitation, was elected the president of the Conference. The Conference committed itself to:[41]

(i) Organise the Muslims of the State and secure them their rights;
(ii) struggle for their economic and cultural betterment; and
(iii) liberate them from the disabilities they laboured under.

A number of resolution were passed in the open session of the Conference.[42] These resolutions envisaged the proposals that;

(i) property should not be confiscated on conversion from one religion to another;
(ii) the recruitment to the administrative services should be made according to the proportion of the population of the different communities;
(iii) the land revenue should be reduced;
(iv) all the communities of the State should be allowed to be recruited to the State army;
(v) the people of the State should be secured the right to freedom of speech and expression; and
(vi) all the political prisoners should be released from

[39] *Ibid.*
[40] Civil and Military Gazette, Lahore, 18th October, 1932.
[41] Constitution of All Jammu and Kashmir Muslim Conference, Cl. 2.
[42] Resolutions of the Muslim Conference, 16th, 17th October, 1932.

detention.

By another resolution the Conference gave its Working Committee the authority to convene a meeting of the General Council, whenever that was found necessary, to assess and evaluate the action, the Government had taken on the recommendation of the Grievances Enquiry Commission.

Meanwhile, Raja Hari Krishen Koul had been removed from his office and on the advice of the Government of India, the Maharaja had appointed Colonol E.J.D. Colvin, an Officer of the Government of India, the Prime Minister of the State. Two more officials of the Indian Civil Service had been inducted into the State Ministry and put in charge of the home affairs and finance. Colvin was a committed Civil Service official. In fact, he had been sent to fulfil more than one commission in the State. Besides being deputed to tighten the control over the administration of the Maharaja and stabilize the political situation in the State, he was entrusted with the arduous task of securing British control over Gilgit and the rest of the northern frontier of the State. The fast changing patterns of power relationships in Asia, particularly after the invasion of Manchuria by the Japanese, had given the northern frontier of the State, the importance it never had before. The Russian frontiers which sprawled menacingly close to the borders of the State, continued to pose a serious threat to the British Colonial interests in India. Gilgit and its adjoining territories remained undefended. Colvin succeeded in persuading the Maharaja to handover Gilgit to the British. But sooner than was expected, Colvin stood face to face with another delicate situation. The rebellion and the riots in Mirpur and Poonch were suppressed.

In Kashmir, the widespread eruption of Muslim resentment against the Dogras had also spent itself. Colvin could foresee the probable direction, the different political and communal movements were likely to take after the unrest had perculated down to the mass levels. Glancy had broken up the different movements and geared them to factional interests, but Colvin realised that once the agitation spread down to the masses the movements would out-step the restrictives Glancy had manoeuvred to place on them. He has aware of the necessity

to stabilise the conditions in the State before the prevailing unrest assumed any radical directions and became a threat to both the Dogras and the British. He set out to suppress the Muslims with all his might.

On January 30, 1933, Sheikh Mohammad Abdullah sent a circular to the members of the Working Committee and members of the General Council of the Muslim Conference, inviting them to attend a metting on March 5, 1933, to consider the steps taken by the Government to implement the recommendations of the Grievances Enquiry Commission, and chalk out a programme of action to secure the implementation of such recommendations with regard to which no measures had been taken.[43] The communication put the Government on guard. The Conference leaders had in the meantime, started a vigorous campaign of meetings and protests against the policies of the Government in regard to the implementations, the recommendations Grievances, Enquiry Commission had made.[44] Colvin had no reason to be fearful of how the agitation took shape, but he hurried to Srinagar and opened negotiations with the Conference leadership. The leaders of the Conference were assured of speedy and more effective measures to remedy the grievances, the Muslims had complained about.[45] For a while Colvin triumphed. Later events proved that the assurances he gave to the Muslim represntatives were hardly meant to be honoured and implemented.

On December, 30, 1933, the report of the Franchise Committee, was presented to the Maharaja. The recommendations embodied in the report were accepted and the report was promptly published. The recommendations, made by the Franchise Committee, fell far short of the demands the Muslims had made. The Muslim leaders disapproved of the principals on which franchise had been extended, the representation the Muslims had been given in the Assembly and the powers which

[43] Communication from Sheikh Mohammad Abdullah to the Working Committee of the Muslim Conference, February 7, 1932.

[44] Working Committee meeting of the Muslim Conference dated 8th March, 1933.

[45] Rashid Taseer, *Tahreek Huryat Kashmir*, Vern. p. 299.

the Assembly had been vested with. The minorities also expressed their dissatisfaction on the basic structure, the recommendations of the Franchise Committee laid out, mainly on the ground that the proposed assembly was hardly vested with any substantial powers.

On February 10, 1934, the Working Committee of the Muslim Conference met in Sialkot to consider the report of the Franchise Committee. In Kashmir, sporadic disturbances had been going on for some time in response to the agitation launched by Youngmen's Muslim Association.[46]

There was sharp disagreement in the Working Committee on the agitation in Kashmir and other major issues including the implementation of the recommendations of the Grievances Enquiry Commission and the report of the Franchise Committee. Consequently the Working Committee was dissolved and Chowdhry Gulam Abbas was appointed the sole dictator of the Conference and authorised to negotiate with the Government in regard to the Muslim demands and the recommendations of the Franchise Committee and take such action as he considered necessary. Abbas reached Srinagar and in accordance with the instructions of the Working Committee opened negotiations with the Prime Minister E.J.D. Colvin.[47] Chowdhry Abbas complained to the Prime Minister that the Government had failed to fulfil the assurances given by it with regard to the implementation of the recommendations of the Grievances Enquiry Commission. Chowdhry Abbas also conveyed to the Prime Minister that the Muslims were not satisfied with the recommendations of the Franchise Committee and did not approve of the composition of the proposed Assembly or the representation the Muslims were secured in it. Chowdhry Abbas told the Prime Minister that the Muslims favoured the institution of an Assembly which envisaged some measure of responsibility.[47] Colvin agreed to discuss the issues involved in the implementation of the recommendations of the Grie-

[46] *Ibid.*

[47] Choudhry Ghulam Abbas to Hari Krishen Koul, Prime Minister, Jammu and Kashmir State, released to Press by Choudhry Abbas, 27th February, 1934.

vances Enquiry Commission, but refused to open up discussion on the constitutional reforms or the recommendations of the Franchise Committee. Choudhry Abbas turned down the offer, gave a call for civil disobedience and boycott of the recommendations made by the Franchise Committee. He was immediately arrested and sentenced to imprisonment for six months. There was a feeble response to his call for civil disobedience. A few days after his arrest, the agitation fizzled out.

Chapter 4

Constitutional Reforms

The reasons which motivated the British Government to compel Maharaja Hari Singh to institute an enquiry into the causes of the Muslim unrest, deserve an in-depth analysis and study. One of the major factors, which determined the British policy, was the keen desire of the civil service officials of the Political Department to curtail the powers of the Maharaja and provide for the imposition of political restrictions on his authority. The appointment of the Grievances Enquiry Commission was a subtler offensive, the British launched to undermine the Maharaja but the appointment of the Constitutional Reforms Conference was a direct and more defined effort to cut down the powers of the Maharaja and devise a structure of checks to contain his operatives. B.J. Glancy was secured the position of precedence in the Conference and he took the full advantage of his placement. In fact, he drew up the lines on which the Conference would be organised as well as the rules of its procedure.[1]

[1] Report of the Kashmir Constitutional Reforms Conference, 1932, p. 1-3.

The Conference examined the feasibility of instituting a Legislative Assembly in the State, and the extent of the functions, it would be entrusted with. The Conference represented different regional and Community denominations, and political factions, having contradictory interests and wide divergence of views on constitutional and political issues. The impact of the events which followed the incidents at Jammu and the indiscreet policies, the State Government adopted in the earlier phases of the Muslim agitation hung over the Conference heavily. Tempers still ran high. In an atmosphere pervaded by fear and prejudice the Conference failed to evolve a consensus of opinion and failed to arrive at uniform conclusions with regard to the proposed reforms.[2] In fact, a number of the members, many of whom represented the minorities, expressed misgivings about the institution of a representative assembly in the State and the exension of franchise to the people. Bartrand Glancy, the President of the Conference, had little interest in co-ordinating the divergent views and finding a basis for constructive constitutional reform. The crafty Englishman was particular to devise measures to contain the Maharaja and secure a wider diffusion of the powers which the Maharaja had centralised in himself after the reconstitution of his government in 1926. Glancy aimed to secure the Council, a position of effective and independent authority and provide statutory safeguards against any interference in its function. In April, he prepared a report based on his own formulations. The report was exclusively his handiwork and except for him, it was not signed by any other member of the Conference. The report was read in Urdu at a meeting of the members of the Conference, obtensibly to provide them with an opportunity to suggest modifications and changes in it. A few days after, the report was submitted to the Maharaja. Glancy admitted his inability to bring round the Conference to agree on any accepted formula with regard to the institution of the proposed assembly, its composition and its competence. In his report, Glancy observed:

As regards the first of these questions it will be seen

[2] *Ibid* p. 3.

from the proceedings that there has been some difference of opinion. In regard to the functions of the proposed Assembly something closely approaching unanimity has been achieved. So far as the other main issues are concerned, there has been considerable divergence of views, especially with regard to the composition of the Assembly. This divergence is hardly surprising considering the conflicting interests which different members have represented. There appeared unfortunately to be no hope what-so-ever, attaining any semblence of a unanimous finding on these points, and it was therefore, agreed that there was no prospect of submitting a joint report. The Chairman accordingly forwards his own recommendations, referring, as may be necessary, to the opinions put forward on behalf of various interests; the proceedings recorded will show that the recommendations made, follow in general the joint views expressed, where there has been a consensus of opinion. Where opinions have differed endeavours have been to bear in mind the legitimate interests of all Communities concerned.[3]

The report drafted by Bertrand Glancy envisaged the establishment of a representative assembly, empowered to legislate and exercise a measure of control on the finances of the State.

It appears highly desirable that the subjects of the State should have been given a voice in the administration and in view of the announcement already made by His Highness in this behalf, there would seem to be no room for doubt as to the action which should be taken in this respect.
It is recommended that a Legislative Assembly should be established as soon as may be practicable.[4]

In regared to the composition of the proposed Assembly, Glancy recommended that the Assembly be composed of sixty

[3] *Ibid.* p. 3.
[4] *Ibid.* p. 3-4.

members, of whom thirty-three were to be elected, twenty-two nominated and five appointed by the Maharaja. Not less than one third of the nominated members were to be non-officials. Glancy presumed that the elections to the thirty three seats in the proposed Assembly would provide for a clear elected majority and the allocation of a minimum of one third seats to nominated non-officials would secure a proportion of not less than two non-official members to one official member. Glancy noted:

> It would seem a fair solution that the total number of nominated members should be equal to two thirds of the number of elected members, namely 22, and that in addition to these His Highness the Maharaja Bhadur should, if he sees fit to do so, appoint his ministers, not exceeding 5 in number, as ex-officio members. The total membership of the Assembly would thus be limited to 60 (33+22+5). In regard to the nominated members, not less than one third should be non-officials, apart from this His Highness should have entire discretion in their matter of nomination. There has been a general consensus of opinion, however, expressed at the Conference that nomination should be so regulated as to provide as far as possible for the representation of interests which are not specially catered for in the elected membership, such for instance as Jagirdars and Commercial interests.[5]

Bertrand Glancy recommended a tenure of three years for the proposed Assembly. It was proposed that the Assembly should meet twice a year, in autumn at Srinagar and in Spring at Jammu. A significantly important recommendation made by Bertrand Glancy was with regard to the office of the President of the Assembly. In unambiguous terms he recommended that the Assembly should be presided over by the Prime Minister or such other Ministers as the Maharaja decided to appoint. With regard to powers and functions of the proposed Assembly, Bertrand Glancy recommended that the Assembly be vested with the power to legislate on all subjects except those

[5] *Ibid*. p. 12.

reserved for the exclusive control of the Maharaja, namely foreign relations and the discipline and control of the State forces. Glancy recommended that limitation be imposed on the introduction of private bills in the Assembly which involved the imposition of disabilities on any class or Community and affected the rights granted to Jagirdars and Pattadars etc, in their Sanads or Pattas. Limitation was also recommended to be imposed on the introduction of private bills in the assembly which sought to effect the religious rites, usages, and endowments and personal laws of any community and no such bills were to be introduced in the Assembly without the prior permission of the Maharaja and unless two thirds of the elected members did not vote for the introduction of such a bill. Glancy also recommended that the limitation be imposed on the introduction of private bills which involved the imposition of fresh taxes or the enhancement or reduction of existing taxes and which stipulated the application of any law to Illaqas and Jagirs where the State laws were not ordinarily applicable. Any such private bills were not to be introduced in the Assembly without the prior sanction of the Maharaja. Glancy recommended that the Maharaja be vested with the power to give his assent to the bills passed by the Assembly. He also recommended that the Maharaja be reserved the power to withhold his assent and refer a bill back to the Assembly for consideration and amendment.

Recommendations were also made by the British Commissioner which sought to reserve the Maharaja, powers to promulgate ordinances for the good government of State in case of emergencies. Such ordinances were to remain in force for six months unless repeated by the Maharaja at an earlier date. Recommendations were also made by virtue of which the Maharaja would be reserved the powers to certify any bill and declare them having been passed which the Assembly declined to pass but which the Maharaja considered necessary for the good government of the State.[6]

Recommendations were also made by the Bertrand Glancy which sought to vest certain financial powers with the proposed Assembly. No taxes were to be imposed and no monopolies

[6] *Ibid.* p. 4.

were to be granted by the Government without making a reference to the Assembly.

> No kind of new taxation should be imposed without reference to the Assembly, the grant of monopolies etc. which amount in themselves to the imposition of new taxation should be treated in the same manner.[7]

Bertrand Glancy made elaborate recommendations with regard to the basis on which the right to franchise would be extended to the people of the State.[8] Glancy suggested that approximately 10% of the total population could form a general basis for franchise. He, however, advised that a special Fanchise Committee was needed to be appointed to lay down the qualifications with regard to franchise.

> It is generally agreed that the number of voters on the electoral roll should amount approximately to ten percent, of the total population, a ratio which has frequently been adopted as the working rule in Birtish India. In order to achieve this object the appointment of a Franchise Committee or some organisation corresponding thereto will be necessary. Information is unfortunately lacking as to the number of people likely to be entitled to vote if different kinds of qualifications are adopted; the proposals put forward are therefore merely tentative and suggested as a temporary expedient.
>
> As a working basis for the time being, various qualifications have been suggested.
>
> It will be observed from the proceedings that opinions have differed to a marked extent in this respect. For instance, the views given in respect of land revenue qualifications have varied between Rs. 10 payment and Rs. 50 payment per annum; in respect of immovable property between Rs. 500 and Rs. 2000 in value, and in regard to educational qualifications between Middle Pass and graduate standard.

[7] *Ibid.*, P.6.
[8] *Ibid.*, P. 6.

In order to formulate a broad frame work Glancy suggested a number of qualifications which could be laid down to determine the extent of the franchise. These qualifications included:

1. Payment of land revenue amounting to Rs.20 per year;
2. Possession of immovable property, not less than Rs.1000 in value;
3. Membership of a learned profession, such as the Medical or legal profession;
4. The receipt of a Government pension of not less than Rs25 per month;
5. Payment of Municipal taxes not less than Rs20 per year;
6. Enjoyment of titles and the posts and positions of Zaildars, Lumberdars and Safed-Poshes;
7. Assignment of not less than Rs. 50 per year in Jagirs and Pattas; and
8. Education of native standard or of corresponding vernacular standards.

Enumerating the disqualifications pertaining to the Franchise, the British Commissioner recommended the exclusion of the following categories of people from the right to franchise:

1. Women
2. Persons below the age of 21
3. Persons certified as insane
4. Undischarged bankrupts or insolvents
5. Persons convicted by a criminal court, of an offence, punishable with imprisonment for a term exceeding six months
6. Persons who are bound for good behaviour
7. Persons who were not State-Subjects and who were not domiciled in the State for a consecutive period of five years

In regard to the question of State-Subjects, Glancy was not satisfied with the existing definitions of the State-Subjects and recommended the liberalisation of the State-Subjects rules. In

this report he wrote:

> It is not within the scope of the Conference to consider the appropriateness of the existing definition of 'State-Subjects' for general purposes. As regards qualification for the franchise, however, though there is every reason for upholding the prior claims of State-Subjects in general, the present definition appears to be unduly rigid, domicile in the State for a thousand years cannot according to this definition qualify a man to become a heriditary State-Subjects. It would seem both unfair and inexpedient to deny the right to franchise to a man who has so far identified himself with local interests as to make his domicile in the State over a consecutive period of five years. As one member of the conference has aptly expressed it, man can beget sons, he cannot beget his ancestors.

The most intriguing suggestions and the most deleterious that Bertrand Glancy made, was with regard to the adoption of separate electorates. Though, Glancy reported that he had found widespread agreement among the parties represented in the Conference, favouring separate electorates, he himself favoured the adoption of the separate electorates and intended to exploit the prevailing communal and regional strains to divide the people of the State on communal and regional lines. The British had utilised the events that had occured in the State during the year 1931, to undo the Dogra regime. They had, however, never lost sight of the real challenge they faced the danger posed by the elemental upsurge which shook the Dogras and upturned them. In his report Glancy observed:

> One important question that arises is whether electorates should be separate or joint. It will be observed that there has been a general consensus of opinion at the Conference in favour of separate electorates. Some members have pointed out that although the establishment of separate electorates has some times been regarded as responsible for increasing communal tension in British India, the acute communal feeling which unhappily prevails in the State at the present time can certainly not be ascribed to

this cause; it has been maintained that in case of Srinagar Municipality the introduction of joint electorates has enhanced the feeling of antagonism and distress between the different communities. It would appear that in the existing state of tension, the institution of joint electorates must be regarded as dangerous experiment. It is obviously advisiable at the present to avoid as far as possible all superfluous elements of danger. Separate electorates are accordingly recommended.[9]

The acceptance of separate electorates inevitably led to the contest for wheitage in the proposed legislative assembly. The Muslim representatives claimed twenty five of the elected seats as they formed 75% of the total population of the State. The Hindus claimed two elected members in the proposed Assembly for every one Muslim member. Special claims were made by the Sikhs, Rajputs and the depressed classes. Glancy recommended that special wheitage be given to the minorities so as to bring the number of their elected members to 33 1/3 per cent of the total number of seats in the proposed Assembly leaving the Muslims with a fraction over 60 per cent and the Sikhs and Buddhists just over 3%. He recommended twenty of the elected seats in the Assembly be given to the Muslims, eleven seats be given to the Hindus and one each be given to the Sikhs and the Buddhists. The claims of the depressed classes were over looked on the ground that the depressed classes were recorded in the census as Hindus.

It is not proposed that any elected seats should be reserved for the depressed classes. In the census, the depressed classes are recorded as Hindus, and there appears to be no significant reason for according them different treatment from that received by them in the Punjab, where no special reservation obtained.[10]

Recommendations of the Constitutional Reforms Conference were presented by Bertrand Glancy to the Maharaja in

[9] *Ibid.*, p. 9.
[10] *Ibid.*, p. 11.

May, 1932. In pursuance of the recommendations Glancy made, a Franchise Committee was appointed by the Maharaja to report on the quantum and content of the elected membership in the proposed assembly, the determination of the qualifications for franchise and the delimitation of the separate electorates. Sir Barjor Dalal, the Chief Justice of the High Court in the State was appointed the Chairman of the Committee. The Committee was constituted of L. W. Jardine, a civil service official of the Government of India, who had been earlier appointed the special Minister for the riot affected areas in Udhampur and Poonch districts, Thakur Kartar Singh and Sheikh Abdul Quyum. Jardine was appointed the Vice-President of the Committee and the Franchise Officer. In March 1933, however, Jardine was replaced by another retired civil service official of the Government of India Sir Ivo Elliot who was appointed the Vice-President of the Committee and the Franchise Officer. The Commission issued a questionnaire to cover the ground of the enquiry. In Kashmir province evidence was recorded and statements received in autumn of 1932; while in the province of Jammu evidence and statements were received in April, 1933. The Commission invited the major political factions, which also included the All Jammu and Kashmir Muslim Conference, to present their views to the Committee. The Committee submitted its report on 30th December, 1933.[11]

The Franchise Committee recommended the institution of a legislative assembly composed of seventy five members of whom thirty three were elected and thirty were nominated. The Committee recommended that the Maharaja be reserved the right to appoint twelve official members to the Assembly, among whom six would be the Ministers. According to the recommendations of the Committee the other six non-officials were to be appointed on the basis of their expert knowledge in the various spheres of legislation. One official member was to be nominated by the Illaqadar of Poonch with the approval of the Maharaja. The Franchise Committee did not accept

[11] Report of the Franchise Committee, 1933, p. 1; Jammu and Kashmir Government Gazette, Vol. 46, No. 14, dated, 20th January 1934.

the recommendations made by Bertrand Glancy with regard to the composition of the Assembly and turned down the suggestion that the elected members and the non-officials should constitute the majority in the Assembly.

With regard to the wheitage given to the different communities the Committee recommended that Muslims of the State be represented by twenty one elected members in the Assembly, the Hindus by ten elected members and the Sikhs by two elected members. The Muslims were recomended to be given a minimum wheightage of 32 members among whom eleven were nominated and twenty one elected. The Hindus were recomended to be given a maximum wheitage of 25 members which included 15 nominated Hindus. The nominated members were to be appointed by the Maharaja. Certain broad lines were laid down by the Committee which were to be kept in consideration while the nominations were made. The Committee observed:

> It is not for us to restrict His Highness' freedom of choice in summoning his Councillors by name, but we would respectfully urge, firstly that they should be chosen from those whose actual and historical position in the State is so eminent that they would naturally be members of a second chamber, if such were constituted, secondly that they should not be officials, and thirdly that in order to preserve the balance of the communities, no fewer than five should be Muslims. It would also be advantageous if one State Councillor were a Sikh who could help to harmonize the more purely local views of the representative Sikh members. Fourthly we recommend that in view of their historical position in the State, four of the State Councillors should be Rajputs and four should be Illaqadars or Jagirdars.[12]

The delimitation of the constituencies was recommended to be done on the territorial and communal basis.[13] The entire State was recommended to be divided into 12 rural and 2 urban districts. The urban districts were to include the Jammu

[12] *Ibid.*, para 15.
[13] *Ibid.*, para 8,

city and the Srinagar city and the rural districts were to include the Wazarats of Jammu, Udhampur, Reasi, Kathua, Mirpur, Kashmir north, Kashmir south, Muzaffarabad, Ladakh and Gilgit and the two Jagir Illaqas of Poonch and Chenai. The Committee recommended that two members be elected from each constituency one by the Hindu electorate and other by the Muslim electorate. The Committee also found that Mirpur, northern Kashmir, southern Kashmir and Poonch could also not be made single member constituencies in view of the composition of their population though it would be anamolous to give representation to the minority communities which were almost negligable in comparison with minorities in Jammu, Udhampur and Reasi.

It was decided by the Committee to provide two members for each of these constituencies both to be elected by the Muslim electorates. The Committee also recomended representation for smaller minorities and local interests by grouping them into separate electorates. The Committee noted in its report:

> But while we thus provide for the minorities by election or nomination according to their size we must also in fairness to the majority community, be mindful of our principle of giving some weight, though in a less degree to the members of adult male population. We follow the same course of giving an extra elected member for a large group and an extra nominated member for a smaller group, and we propose that where any community has more than 40,000 adult men to each elected member, their would be an additional elected member for each 40,000 and an additional nominated member for part of 40,000 greater than 5000. This scale would give a third elected member both to Kashmir North and Kashmir South, both from Muslim electorate an extra Muslim nominated member to each of the three Kashmir Districts, and an extra Hindu nominated member to Jammu and Udhampur. [14]

With regard to the Sikhs the Committee recomended that separate representation be given to the Sikh community. The

[14] *Ibid.*, para 10.

Sikhs were less localised than certain other minority communities and therefore, it was found difficult to adjust their groups into the scheme of the constituencies proposed by the Committee. The Sikhs were locally distributed in three groups: the Sikhs who inhabited the regions of Mirpur and Poonch, the Sikhs who lived in Muzaffarabad, Baramulla and Uttarmachipora and the Sikhs who were scattered all over the State and did not form a separate local group. The Committee came to the conclusion that out of the three Sikh groups, those living in Mirpur and Poonch and those living in Western Kashmir be represented by two members in the Assembly.

> Our general method of handling this question of the smaller minority groups would justify us in proposing that three members should be nominated to represent the Sikh groups, but in that case the Sikhs unlike the other communities, would have no elected members. This would on general grounds be an unsatisfactory conclusion, and specially so because the Sikhs have a high percentage of literacy; out of the 12,365 adult males 4,064 are literate. This factor entitles us to recommend that out of three Sikh groups, two (1) Mirpur-Poonch and (2) West Kashmir should each elect one member. The third constituency of Eastern Kashmir and Jammu minus Mirpur will be too large a Constituency in which to arrange an election. So we recommend a nominated Sikh member for that Constituency.[15]

In the final analysis the Committee recommended that in the Jammu city one Muslim member was to be elected by the Muslim electorate and two Hindu members were to be elected by the Hindu electorate. One Muslim and one Hindu was to be elected by the Muslim electorates and the Hindu electorates of Jammu Wazarat. Udhampur Constituency was allotted one Muslim seat and one Hindu seat. In the same manner Reasi and Kathua were given two Muslim members and two Hindu members each. Mirpur, Bimber, Havely, Mendar and Bagh-Sudhunti were given one Muslim member each and the Sikhs of Mirpur-Poonch one representative. Srinagar City was to be

[15] *Ibid.*, para 13.

represented by five Muslim members and two Hindus. each of the tehsils of Pulwama, Anantnag, Kulgam, Handwara, Bugham and Bahramulla were to be represented by one Muslim member. Muzaffarabad was to be represented by one Muslim and one Hindu. The Hindus of Kashmir and the Sikhs of Kashmir were given one member each.

With regard to the Hindus living in the Jagir of Poonch and the people living in Chinani, the Committee recommended that their representatives be nominated to the Assembly by the Illaqadars. The Buddhists of Ladakh and Muslims of Gilgit were also recommended to be represented by nominated members appointed by the Maharaja. In its report the Committee noted:

> We have hitherto referred to representation of Ladakh and Gilgit in the same terms as in the case of the other districts, but we feel that it will be impossible to hold elections in these frontier districts until much greater experience of the conduct of elections has been acquired. Those of our witness who have stated that elections could be held now in Ladakh and Gilgit have clearly been speaking without any knowledge of the actual process of election and have made light of administrative difficulties which they have not attempted to example. These difficulties will be considerable in other parts of the State, but in Ladakh and Gilgit the rigours of the climate, the immense area, the wide despersion of inhabited sites and the extreme difficulty of communications between them make it at present impossible for a limited and entire inexperienced staff to conduct an election. We must therefore recommend that at least until experience of election has been gained the members for Ladakh and Gilgit should be nominated and not elected. Our scale would give one Muslim and one Buddhist member to Ladakh and one Muslim member to Gilgit; but in view of the scattered and diverse population of Ladakh we recommend that two Muslim and two Buddhist members should be nominated for that Wazarat. One of the Muslim members should represent Skardu Tehsil and the other Kargil.[16]

[16] *Ibid.*, Para 2.

With regard to the right to franchise, the Committee followed, in broad outline, the principles laid down by Bertrand Glancy in his report. The Committee, however, did not agree with Glancy that ten per cent of the people of the State needed to be enfranchised. In its report the Committee observed that the suggestion to enfranchise ten percent of the people of the State was arbitrary and would lead to difficulties. The Committee pointed out that the principles laid down by the Indian Statutory Committee and the Indian Franchise Committee, had in fact, extended franchise to a percentage which varied from 1.1 per cent in Bihar to 3.9 per cent in Bombay, though the people in the Indian Provinces had long experience of elections to the Provincial Councils and the local bodies. Barjor Dalal was not far from what the truth was. In its report the Committee noted :

> There is no virtue, whatever, in the ratio of 10 per cent. It is an arbitrary figure which has been suggested as a rough measure of the advance which can be made practically towards adult sufferage in a country where years of experience of a restricted franchise have made some advance possible. It would be entirely against constitutional history to lay so much stress on the total numbers of men, women and children, or in other words to think in terms of adult sufferage, in a country which has never yet had any widespread electoral system. In the first stage of constitutional progress the chief-element is not the men, it is the constituency.[17]

The Committee recommended that such of the State-Subjects, who had attained twenty-one years of age and belonged to any of the following classes of persons should be enfranchised:

1. Zaildars, Safed-Posh or Lumbardars;
2. Imams of Mosques, Muftis, Qazis Adhishdatas of temples, Bhais or Granthis of Gurdwaras and Ordained Ministers of the Christian Church;

[17] *Ibid.*, para 6.

3. recognised title holders;
4. retired pensioned Officers, Non-Commissioned officers, soldiers of the State forces;
5. pensioners receiving a monthly pension of ten rupees or more from the state;
6. Doctors, Hakims, Vaids, Lawyers and School-masters;
7. people holding Middle School Certificates, or certificates of Budhiman, Rattan, Adib, Munshi, Moulvi, Prajana examination or any other higher examination;
8. Illaqadars;
9. Jagirdars, Manfidars, Guzarkars, holding an assignment of not less than 20 rupees per year;
10. occupancy tenants paying a rent of 20 rupees or more per year;
11. owners of land assessed to land revenue of 20 rupees or more per year;
12. owners of immovable property other than land of a value of 6000 rupees or more; and
13. people paying a grazing fees of 20 rupees or more year.[18]

The Committee recommended that women in general be excluded from franchise except in case where any of them had secured the middle examination certificate. The Committee noted:

> The same principle leads us to agree with Mr. Glancy that women in general should not be enfranchised. We have a representation from the local branch of the All-India Women's Conference, and sum of Hindu witnesses have favoured women's sufferage. But it is obvious that the majority of the population would not welcome this and we must add the practical consideration that the inclusion of women voters in any large number would increase the administrative difficulties of the first election. At the beginning the most we can do is to admit women who have a sufficient educational qualification.[19]

[18] *Ibid.*, Para 20-24.

[19] *Ibid.*, Para 20.

Praja Sabha

In April 1934, the Maharaja promulgated the Constitution Act of 1934. The Constitution Act was based on the recommendations made by the Constitutional Reforms Conference and the Franchise Committee. The Act provided for the reconstitution of the government of the State and the institution of a Legislative Assembly. The provisions were envisaged by the Act for the constitution of a Council of Ministers appointed by the Maharaja and responsible to him. Certain powers of the government were reserved by the Maharaja for himself and exclusively for his control. The powers left in the residuum were vested with the Council of Ministers to be exercised by it. The Act laid down the provisions for the organisation of the Legislative Assembly and the procedure of its business. The Act also defined the relationship between the Council of Ministers and the Legislative Assembly and the extent of the over all control, the Maharaja would exercise over both the institutions.[20]

The government of the State was to be conducted in the name of the Maharaja and all powers were to be exercised by him and in his name. All powers, legislative, executive and judicial were declared to have always been possessed by the Maharaja and the provisions of the Constitution Act were not deemed to affect the inherent right and prerogative of the Maharaja to make regulations and promulgate ordinances by virtue of the authority inherent in him.

> All powers, legislative, executive and judicial in relation to the State and its Government are hereby declared to be and to have been always inherent in and possessed and retained by His Highness the Maharaja of Jammu and Kashmir and nothing contained in this Regulation shall affect or be deemed to have affected the right and prerogative of His Highness to make and pass Regulations, Proclamations and Ordinances by virtue of his inherent authority.[21]

[20] Constitution Act, 1934, Regulation, No. 1.
[21] *Ibid.*, Sec. 3,

Subject to the inherent powers and the prerogative of the Maharaja, the powers of the government were divided into reserved and the non-reserved subjects. The reserved subjects were delimited for the exclusive and personal control of the Maharaja. The reserved subjects included:

(i) the Maharaja, the members of his family and the management of his household;
(ii) the relations, treaties, conventions and agreements between the State and the Crown or the Government of India or the Government of any other State in India or any foreign power;
(iii) the Gilgit and Ladakh frontiers;
(iv) the rights of the Illaqadars and the Jagirdars;
(v) the organisation and control of the State army;
(vi) the State Departments namely, ceremonials, Toshakhana and State Garages, State stable, Palaces and Palace Guards, reception and Shikarkhana;
(vii) Dharmarth; and
(viii) provisions of the Constitution Act.[22]

The non-reserved subjects were to be administered by a Council of Ministers appointed by the Maharaja. The Council was to be constituted of the Prime Minister and such other Ministers who were appointed by the Maharaja. The Prime Minister was the President of the Council. The Council was to hold office during the pleasure of the Maharaja and was responsible to him. The Maharaja was reserved the right to lay down the rules of business in the Council, determine the allocation of portfolios to the Ministers and give directions and issue orders on specified matters of the government.[23]

The Constitution Act envisaged the institution of a legislative body which comprised:

(i) the Council of Ministers; and
(ii) the Legislative Assembly.

[22] *Ibid.*, Sec. 7.
[23] *Ibid.*, Sec. 8.

The membership of the Assembly was fixed at seventy five. Thirty three of the members were to be elected for the constituencies specified in the Electoral Regulation promulgated earlier. Sixteen of the members were to be nominated for special constituencies enumerated by the Act and listed in the schedule appended to it. Besides the elected and the nominated members the Assembly was to have fourteen other members who were appointed by the Maharaja and twelve official members who were appointed to the Assembly by virtue of their office and among whom were included the Ministers. The tenure of the Assembly was fixed at three years unless it was dissolved earlier or its term was extended for special circumstances. The Maharaja was reserved the powers to summon and prorogue the Assembly. Ordinarily the Assembly was to meet in two Session in a year : in March at Jammu and in October in Srinagar. The Maharaja retained the right to summon the Assembly for ordinary or special sessions at such time and place, he deemed fit.[24]

The Assembly was authorised to make rules for the conduct of its business and the procedure to be followed by it, subject to the rules and the Standing Orders it made the members of the Assembly were ensured freedom of speech. The members were also granted the privilege of immunity from any proceedings in Courts for their speeches or vote in the Assembly. The Assembly was not vested with the power to elect its presiding officer. Instead the Maharaja retained the power to appoint the President of the Assembly.

The Assembly was empowered to legislate on all matters which were not reserved for the personal control of the Maharaja. The President of the Assembly was empowered to refuse leave to move a resolution or ask a question, which in his opinion affected the reserved powers. The Assembly was barred to consider or enact any measure which imposed any disability on any community in the State. Limitation was also placed on the Assembly to consider a resolution or a measure which affected the religious usages, endowments or personal law of any community, unless the previous sanction of the Maharaja was secured and two thirds of the Assembly members of the com-

[24] *Ibid.*, sec. 100.

munity affected gave their consent in writing that the measure be taken up for consideration. The President of the Assembly was empowered to refuse leave for a resolution to be moved if the resolution affected the religious rights, usages, endowments or the personal law of any community.

The Maharaja reserved the powers to suspend proceedings on a resolution or a Bill if he found that the measure would affect the safety and the tranquilty of the State. The Maharaja also reserved the power to certify a Bill to have been passed in case the Assembly refused leave to introduce it or refused to vote for it.[25]

With regard to the financial powers of the Assembly, the provision of the Constitution Act were based on the recommendations of the Constitutional Reforms Conference. The Council of Ministers was required to place before the Assembly a copy of the detailed statement of the estimated annual revenues and expenditure along with the statement of revenue and expenditure of the two jurisdictional Jagirs-Chinani and Poonch. The members of the Assembly were granted the right to move resolutions regarding any appropriation of revenue or regarding the statement presented to the Assembly but the resolutions of the Assembly did not effect the statement and the demand for grants. The Council was empowered to take any such action on the resolutions of the Assembly as it deemed necessary. In case of the imposition of any fresh taxes or duties or the alteration of any existing taxes by an ordinance of the Maharaja or a regulation promulgated by him, the Council was required to give each member of the Assembly a copy the Ordinance or Regulation and no imposition or alteration of any taxes could be effected until the Council had taken into consideration the resolutions of the Assembly.

The following financial matters were not open for discussion in the Assembly and the Assembly was not empowered to adopt any resolution on them:

(i) the expenditure with regard to the reserved subjects;
(ii) the expenditure obligatory under law;
(iii) the pensions and gratuities granted by the Maharaja;

[25] *Ibid.*, sec. 26, 27, 28 and 29.

(iv) interest on loans and sinking fund charges; and
(v) expenditure classified as political.

Powers were vested with the President of the Assembly to determine whether a financial matter was subject to the vote of the Assembly.[26] No proposals could be made or resolutions moved in the Assembly for the appropriation of any revenues except on the recommendations of the Council. Measures affecting the public revenues or imposing any taxes and duties could also not be introduced in the Assembly without the previous sanction of the Council. The Council was empowered to regulate public debt and public revenue which included the imposition of taxes and duties.[27]

All Bills and measures passed by the Assembly were to be submitted to the Maharaja for his assent. The Maharaja was reserved the right to return a Bill to the Assembly for reconsideration. Provisions were included in the Act according to which the Maharaja could convey messages to the Assembly in person or through the Prime Minister or through the President of the Assembly. The Maharaja was also reserved the powers to promulgate Ordinances. In case of emergencies or where immediate legislation was required in any matter affecting the peace and good government in the State, the Council was authorised to submit to the Maharaja, Ordinances for sanction. Such Ordinances were to have the force of law for six months.

A peculiar feature of the Constitution Act was the overriding powers which were vested with the Council of Ministers pertaining to the organisation and function of the Assembly.[28] The council was empowered to make rules with regard to:

(i) the term of the nominated members and the manner of filling any casual vacancies among the nominated members;
(ii) the conditions under which nominations were made and the manner in which they were made;
(iii) the qualification of the electors, the delimitation of the

[26] *Ibid.*, sec. 39.
[27] *Ibid.*, sec. 41.
[28] *Ibid.*, sec. 15.

constituencies, and the methods of election for the Assembly;

(iv) the qualifications of the electors; and

(v) the disputes with regard to the elections.

The Council was also empowered to make rules for the:

(i) regulation of the business in the Assembly;

(ii) the preservation of order in the Assembly;

(iii) the quorum;

(iv) prohibition and regulation of the questions asked in the Assembly; and

(v) prohibition and regulation of the discussions in the Assembly on subjects specified in the rules.

Not only was the Council vested with powers of regulating the organisation and the function of the Assembly, the Council was also vested with power of interpretation of the provisions of the Act and the rules made under the Act. The Council was therefore, secured precedence over every other instrumentality created by the Constitution Act. The Constitution Act read:

> If any dispute arises as to the interpretation or the carrying out of any of the provisions of this regulation or the rules made thereunder, the decision of the Council, subject to the provision of the Section 3, shall be final.[29]

An Electoral Regulation[30] was promulgated by the Maharaja which laid down the basis for the delimitation of the constituencies and the qualifications of the electorates. The Regulation was based on the recommendations of the Franchise Committee and envisaged separate electorates. Accordingly no person was qualified to vote in a Muslim constituency if he was not a Muslim, in a Hindu constituency if he was not a Hindu and in a Sikh constituency if he was not a Sikh.

The sufferage was limited to the following classes of State-

[29] *Ibid.*, Sec. 44.

[30] Command order No. P.B. 157, 5th March, 1934.

Subjects who were of more than twenty years in age:[31]

(i) Zaildars, Safesh-Posh and Lambardars;
(ii) Imams of Mosques, Muftis, Qazis, Adheshdatas of temples, Bhais and Granthis of Gurdwaras and the Ordained Ministers of Christian Churches;
(iii) recognised title holders;
(iv) retired pensioned Officers, Non-Commissioned Officers, and the State-Subjects in the regular armed services of the State or serving in the British armed forces;
(v) pensioners receiving apension of not less than rupees ten a month;
(vi) Doctors, Hakims, Vaids, Lawyers and School masters;
(vii) persons having passed the Third Middle Examination or the Bhudhiman, Rattan, Adib, Munshi Moulvi or Prajna examinations;
(viii) persons who paid a revenue on land owned by them or rent on land held by them in occupancy or paid grazing fee of not less than twenty rupees per year;
(ix) Jagirdars, Maufidars or Guzarkhars holding an assignment of not less than twenty rupees a year;
(x) persons who owned immovable property, other than agricultural land of not less than six hundred rupees in value; and
(xi) persons who paid income-tax.

Franchise was also extended to Tazimi Sardars, Jagirdars, Maufidars and Mukararidars who held Jagirs, Mukararis and Maufis of not less than five hundred rupees per year, landholders who paid two hundred and fifty rupees land revenue per year and pensioners who received a pension of more than one hundred rupees per year. These electorates were grouped into special constituencies.

Women were excluded from the right to vote and only such of them who held the minimum educational qualification of having passed the Third Middle Examination or the examination of Budhiman, Rattan, Munshi, Molvi, Adib or Prajna were accorded the right to vote.[32]

[31] Jammu and Kashmir Praja Sabha Rules, p. I and II.
[32] *Ibid.*, I(d).

The Assembly, envisaged by the Constitution Act was named "Praja Sabha". The machinery to conduct the elections to the Sabha was instituted immediately after the promulgation of the Act. Sir Ivo Elliot was charged with the task of devising the process for the delimitation of the constituencies and the conduct of the elections. The State was divided into constituencies on the basis of separate and special electorates recommended by the Franchise Committee. The number of constituencies was fixed at thirty three. Ten of the constituencies were allotted to the cities of Srinagar and Jammu. Each constituency was put incharge of a returning officer on whom the responsibility of the elections in the constituencies was placed. For the constituencies in the cities the District Magistrates, Assistant District Magistrates and the Presidents of the Municipalities were appointed the returning officers. For the rural constituencies the duties of the returning officers were delegated to the Deputy Commissioners.

The electrol rolls were prepared in accordance with the recommendations of the Franchise Committee.

The rolls for the rural constituencies were prepared by the Tehsil Revenue Officials. For the city constituencies the rolls were prepared by the Municipal Officials. The revised rolls were finally published in May, 1934. The nominations filed were scrutinised in June 1934. Seventy six nominations were accepted for the contested seats. Nine candidates were returned unopposed.

The polling arrangements were supervised by Sir Ivo Elliot. The constituencies were divided into a number of polling areas each of which had a polling station. In all 138 polling stations were established in the twenty three rural constituencies and thirty eight polling stations were established in the ten constituencies in Srinagar and Jammu. The polling was conducted on the special scheme recommended by the Lothian Committee for the British India. The scheme underlined the 'Coloured Box' or the 'Symbol' system under which it was not necessary for the voters, whether literate and illiterate to mark the ballot paper. The system adopted in the State was simple and required the voters to put their ballot papers in boxes marked with definite colours assigned to different candidates. The ballot was secret.

The elections were held on September 3, 1934. Sir Barjore Dalal, the Chairman of the Franchise Committee wrote:

> The number of voters at each polling station was in the neighbourhood of 700 in the rural areas. It was feared by the officers on duty that they would not be able to pass 700 voters through between 10 a.m. and 6 p.m. the hours fixed for polling. Their fears proved to be unfounded, thanks to the excellent system of plolling. It was found that by 2 p.m the voting was practically over and stray voters arrived subsequently.[33]

The Praja Sabha was inaugurated by the Maharaja on September 17, 1934 in a Durbar, where the proclamation of the Maharaja was read to the members of the Sabha by Colonel Colvin the Prime Minister of the State. The proclamation read:

> For our part we declare the Divine Providence having laid upon us the sacred duty to care equally for all those committed to our guardianship, we can recognize no difference between one person and another or between one class and another. They are all our beloved children, whatever their persuasion or creed, and we desire to protect, foster, guide and advance them by every means in our power.
>
> Out of the great love and affection we bear our beloved subjects, we have called you to do your part in working for the well being of this State. We have appointed your task and indicated the lines of service you can render to yourselves and to your Ruler, whose ordained duty it is to safeguard and promote your best interests. We desire you to enter upon the discharge of your responsibilities in such a way that your behaviour may be an example to others and your achievements at once a model for them to emulate and a monument to your own earnestness and your loyalty to the State that you serve.[34]

[33] Barjor Dalal, Jammu and Kashmir State Assembly, first session, Asiatic Review, New series, Vol. XXXI, No. 105.

[34] Inaugural Address, delivered to the Praja Sabha by Maharaja Hari Singh.

Chapter 5

National Demand

The political reforms envisaged by the Constitution Act, obviously did not underline any responsibility at any level in the government or provide for any effective participation in the process of the administration. Most of the important powers of the government were reserved by the Maharaja for his personal control. The Council of Ministers, entrusted with the civil administration, was little more than an executive instrument of the Maharaja and functioned strictly under his instructions and according to his will. The members of the Council were appointed by him and were ultimately responsible to him. The Maharaja retained the powers to make rules for the conduct of the business in the Council, determine the allocation of the portfolios and issue directions and instructions to guide its work. The Council, as it was constituted, made up the highest rung in the official heirarchy through which authority filtered down into the various levels of the government.

The Praja Sabha, crippled by being filled with a nominated majority, was given few substantial powers. The Council of

Ministers was vested with the powers to regulate the conduct of the business in the Sabha, determine the quorum of meetings of the Sabha, provide for the preservation of order, regulate the procedure about the questions asked and the supplementaries raised in the Sabha. The Prime Minister was reserved the powers to determine the allotment of time for official and non-official business. The Secretary of the Sabha was required to furnish the members of the Sabha with the copies of the orders of the Prime Minister. The most pernecious imperative, the Maharaja was armed with, and which robbed the Sabha of any purposeful function, was the power to prevent the introduction of any Bill or stop deliberations on any Bill on the ground that the Bill or any of its clauses would effect the peace and tranquilty of the State.[1]

In respect of financial matters, the Sabha was virtually powerless. The State Budget was prepared by the Council under the supervision of the Prime Minister. No demands could be made except on the recommendations of the Council.[2] The Prime Minister was vested with the arbitrary authority to determine "whether any proposed expenditure fell within the expenditure charged on the revenues of the State." The Prime Minister, in consultation with the President of the Sabha, divided the Budget heads for discussion and fixed priorities for each. No provisions seeking to impose, increase or decrease any tax; regulate borrowings or guarantee by the Council; amend any law with respect to any financial obligation undertaken by the Council and declare any expenditures chargeable on the revenues of the State, could be introduced or moved into the Sabha without the prior permission of the Prime Minister.[3]

It was not after long that the futility of the reforms came to surface. Obviously, meaningful political reforms, which envisaged the institution of responsible government and the attainment of civic rights could not be based on separate electorates, or communal composition of legislative bodies nor could they be justifiably founded on communal majoritarianism. In fact, the new outlook was given articulate expression at the annual

[1] Constitution Act, 1934, Sec. 29.
[2] *Ibid.*, Sec. 36.
[3] *Ibid.*, Secs. 42-57.

session of the Muslim Conference held in Srinagar in November, 1935. Many of the leaders of the other communities were invited to attend the session and Choudhry Gulam Abbas, who was elected to preside over the session appealed to the Hindus and the Sikhs to extend their support to the Conference and assured them that the struggle, the Conference led, was aiming at the amelioration of all the people in the State.[4]

On March 29, 1936, the Working Committee of the Muslim Conference met in Srinagar. The Conference appealed to the Maharaja to widen the scope of the constitutional provisions enacted in 1934, which, the Committee stated, had done considerable harm to the development of the representative and responsible administrative institutions in the State. The Working Committee demanded the transfer of effective powers to the Assembly, extension of franchise and the abolition of the separate electorates. The Working Committee took a decision to organise State-wide demonstrations and protest meetings on May 8, in support of the institution of a responsible legislative organ.[5]

Wide-spread protests and demonstrations were organised all over the State on May 8. In most of the protest meetings resolutions were adopted which demanded the reorganisation of the government in the State and the introduction of administrative responsibility in its function. To ally the fears of the government the Conference leaders assured that the establishment of the representative Political instruments was not aimed to prejudice the powers of the Maharaja.

A month after, the Working Committee of the Muslim Conference constituted a sub-committee to guide the movement for constitutional reforms in the State and prepare a memorandum on the basis of the resolutions passed on 8th May. Dicision was taken by the Committee to submit the memorandum to the Maharaja.[6] The sub-committee was constituted of Sheikh Mohd. Abdullah, Choudhry Gulam

[4] Presidential Address delivered by Choudhry Gh. Abbas, Fourth Annual Session, 1935.

[5] Resolution of the Working Committee, March 29, 1936.

[6] Resolutions of the Working Committee, Hamdard, Dated 12th June, 1936.

Abbas, Mian Ahmad Yar, Mirza Afzal Beg and Raja Mohammad Akbar Khan, a Muslim Conference leader from Poonch. By a resolution, the Working Committee gave a call to the minorities to join the movement for political reforms and assured them that the Conference would consider any safe-guards the minorities considered necessary for their protection.[7]

Within a few days, after the Working Committee meeting, the State Government decided to introduce separate electorates in the Municipal elections also. The elections to the Municipalities had not been affected by the introduction of separate electorates for the Assembly elections in 1934, and the elections at the Municipal level had continued to be based on the principle of the joint electorates. At the time when much of the communal rancour and resentment had died down, the decision of the government came as a rude shock. The Muslim Conference leadership expressed regret and distress at the decision, the government had taken.[8] In 1932, when the separate electorates had been recommended to be introduced in the elections to the legislative bodies in the State, Bertrand Glancy, and L. W. Jarding and after him, Ivo Elliot, had repeatedly assured the Muslim leaders that the separate electorates had been accepted by the Government unwillingly and on the incessant demands, the minorities in the State had made. It was abundantly clear that the British officers were driven by motives other then those suggested by the minority safeguards. The action of the State Government was obviously aimed to carry the process initiated by Bertrand Glancy to its extremes and break up the initiative for effective political performance. In fact, the Government struck to drive deep the communal differences and goad the different communities to consume themselves in internecine strife and communal conflict.

In August, the General Council of the Muslim Conference was convened in Srinagar. A number of decisions were taken by the Council on the Communal situation, the movement for self-government and joint electorates. The Council authorised

[7] *Ibid.*

[8] Hamdard, 4th July, 1936, statement of Sheikh Mohammad Abdullah to United Press.

the Sub-Committee appointed by the Working Committee in June, 1936, to invite Sardar Budh Singh, Pandit Prem Nath Bazaz and Pandit Prem Nath Dogra, a Hindu Leader of Jammu to participate in the deliberations of the Sub-Committee and associate them with she preparation of the memorandum on responsible government.[9] The Committee was also asked to examine the issues of joint electorates and the adoption of universal adult franchise and present a preliminary report to the Council. Sheikh Mohamad Abdullah was entrusted to find means for the further improvement of the communal relations in the State and explore the possibilities of locating a basis for joint political action.[10]

The minorities, which were equally frustrated with the reforms undertaken by the Government, did not take long realise the significance of the improvement in inter–community relations in the State. Besides the moderate movement led by the Dogra Sadar Sabha, which was avowedly committed to social and political reform, the elements of Hindu and Sikh leadership in Jammu, inspired by Indian National Congress, had worked tirelessly to build a non-communal political movement for self-determination in the State. Congress committees had sprung up all over the province under the leadership of Lala Girdhari Lal Anand who had joined the Congress movement in 1921, Pandit Trilochan Dutt and Lala Mulak Raj Saraf. A sizable section of the Kashmiri Pandit leadership in Kashmir also supported the introduction of representative and resposible political institutions in the State. In one respect the Hindus and the Sikhs out-flanked the Muslim Conferenee and established identification of approach with the movement on the national front. The recognition of the fact that the regime and the British colonialism were inseparable and the States people movement was an integral part of Indian, struggle against the British was the most revolutionary aspect of the Hindu upsurge in Jammu. the upsurge accelerated emergency of a non-communal political movement against the Dogras and since the regime was bound by the prescriptives of the paramountcy, it led to a

[9] Resolution of the General Council, No. 3 Muslim Conference, 10-12, August, 1937.

[10] Resolution. No. 3.

direct confrontation between the people of the State and the British power.

In March 1938, the sixth annual session of the Muslim Conference was held in Jammu.[11] It was presided over by Sheikh Mohamad Abdullah. A sizeable section of the Conference leadership favoured drastic changes in the Constitution of the Conference to accommodate within its fold the peoples of other communities in the State. In the Delegates Sessions, Maulana Sayeed Masoodi, a senior leader of the Conference moved a resolution that the Muslim Conference be renamed All Jammu and Kashmir Political Conference.[12] Maulana Masoodi told the Delegates that responsible Government could not be achieved unless the movement for it was supported by all the people of the State. Raja Mohamad Akbar Khan of Pooch supported the resolution.[13] The opposition to the resolution was stiff. A number of delegates from Jammu led by Abdul Hamid Qureshi expressed the fear that the proposed amendments would ultimately damage the interests of the Muslims in the State. The deliberations on the resolutions were stayed. However, in his presidential address to the annual session of the Conference, Sheikh Mohamad Abdullah pleaded strongly for the unification of all people tn the State and the amendment of the constitution of the Muslim Conference in order that its doors were opend to Hindus, Sikhs and the other people in the State.

> It is the first duty of those people who are subject to servitude and suffering to participate in the struggle for responsible government. Who are those people? Not only Muslims, not only Sikhs and Hindus, untouchables and Buddhists but the inhabitants of the State..... The responsible government is not demanded for the eighty percent of the Muslim population. The demand is made for all the people in Jammu and Kashmir. In order to secure responsible government it is essential that we invite the

[11] Rashid Taseer, *Tahrik Huryat Kashmir*, Vern, Vol. I p. 39.

[12] *Ibid.*, p. 39-48.

[13] Resolutions passed by the General Council of the Muslim Conference in its meeting on 10-12 July, 1936.

Hindus,Sikhs, Budhists andthe Harijans to join us and carry them ahead with us.

Advocating the conversion of the Muslim Conference into a national organisation, Sheikh Mohamad Abdullah said:

> Like us, the Hindus and the Slkhs also suffer innumerable disabilities under the present system of government. They too are steeped in ignorance. They too pay taxes. They too face hunger. The institution of the responsible government is as necessary for them as it is for us. Today or tomorrow these people will join us. The main problem with us is how to face forces which impede our progress and stand in our way and thwart our efforts in the unification of the people in the State. To fight that, it is necessary that we change our organisation into a non-communal political organisation and amend its constitution.[14]

A great debate ensued and was carried down to the basic units of the Conference. The elections to the Praja Sabha were held in may, 1937. Two of the nominations filed by the Muslim Conference were rejected. All the remaining seats were captured by the Conference. After the elections, contest in the Conference sharpened. In June, Sheikh Mohamad Abdullah explained the issues involved in a public meeting at Srinagar. He said:

> For the last two years, I have put before you the proposals in my two presidential addresses; that the doors of the Muslim Confernce should be thrown open to the non-Muslims in the State. The issue has deen discussed widely. The discussion has been put off for the next annual session. There are non-Muslims with a nationalistic outlook who are honest and patriotic. They suffer the hardships we suffer and struggle along with us. Their demand that the Muslim Conference be thrown open to them is justified.

[14] Sheikh Mohammad Abdullah, Presidential Address, Annual Session, Muslim Conference, 1936.

Concluding his speech Sheikh Mohamad Abdullah told the people that he would leave the Conference if the non-Muslims were not brought within its fold:

> I am convinced that either I must leave the reins of the Conference from my hand or the doors of the Muslim Conference will have to be thrown open to the non-Muslims.[15]

On 26th June, Sheikh Mohamad Abdullah released a long statement to the press which underlined the course of future action for the Conference with regard to Constitutional reforms in the State. In unambiguous terms Sheikh pointed out that the Conference idealised the institution of responsible government in the State in which the administrative organs would be accountable to the State legislature. Since the present Assembly was dominated by official and nominated members any form of responsibility was inconceivable. Sheikh Mohamad Abdullah felt that it was necessary to launch a common struggle for responsible government outside the Assembly, in which people of all religious denominations should participate.[16]

On June 24, 1938, a resolution was moved in the Working Committee of the Muslim Conference, seeking amendment in the Constitution of the Conference to the effect:

(i) that the name of the Conference be changed; and
(ii) all the people of the State irrespective of their religion, caste and creed be allowed to join its ranks.[17]

The Working Committee remained in session for four days. Finally on June 28, the resolution was approved by the Committee. The resolution stipulated:

> whereas in the opinion of the Working Committee the time has now come when all the progressive forces in the country should be rallied under one banner to fight for the achieve-

[15] Hamdard, 19th June, 1938.
[16] *Ibid.*, 20th June, 1938.
[17] *Ibid.*, 3rd July, 1938.

> ment of responsible government, the Working Committee recommends to the General Council that in the forthcoming session of the Conference the name and constitution of the organisation be altered and amended that all such people who desire to participate in thc political struggle may easily become members of the Conference irrespective of their caste, creed or religion.

Immediatly after the decision on the proposed amendments to the Constitution of the Muslim Conference, the Conference leadership gave a call for demonstrations in support of responsible government. State-wide demonstrations were held on 5th Agust, 1938. Speaking in a public rally in Srinagar Sheikh Mohammad Abdullah said:

> Our experience is that both the Muslims and the non-Muslims are equally shackled in the iron-grip of the autocratic government in the State. Our war is not the war of religions, to secure a few administrative jobs or get a few temples and mosques released from the control of the government or secure a few rights ; that will not end the disabilities we suffer from.[18]

Sheikh Mohammad Abdullah moved the following resolution in the meeting:

> This general meeting of the people of Srinagar express complete dissatisfaction at the present autocratic government and reaffirms the conviction that the remedy, to all the ills of the people of the State of Jammu and Kashmir, lies in the introduction of responsibility in the government. The meeting appeals to all patriots that they unite for the movement for freedom of their country and prepare for the coming struggle in which, after we are victorious, we will free democracy from its political and economic shackles.

The widespread and vigorous agitation for the institution of responsible government in the State and the expressions

[18] *Ibid.*, 14th August, 1938.

of the fraternal regard, the movement evinced for the national liberation struggle in British India, alarmed the Dogras as well as the British. On August 6, 1938, Sheikh Mohammad Abdullah was ordered by the District Magistrate of Srinagar to desist from making speeches which created disaffection against the government. Similar notices were served on the other leaders.[19] The agitation, however, continued unabated.

On August 27, while the agitation was in progress, the leaders, among whom were Sheikh Mohammad Abdullah, Bakhshi Ghulam Mohammad, Khawaja Ghulam Mohammad Sadiq, Maulana Syeed Masoodi, Sardar Budh Singh, Pandit Kashyap Bandhu, Pandit Prem Nath Bazaz and Pandit Shyam Lal Saraf, drafted a joint memorandum on responsible government. The memorandum was called the "National Demand". The next day Pandit Kashyap Bandhu, Sardar Budh Singh and Khawaja Ghulam Mohammad Sadiq were arrested. On August 29, Sheikh Mohammad Abdullah and the other signatories to the "National Demand" were put under arrest. The arrests were followed by massive public demonstrations against the Government. Flustered by the mass upheaval, the Govenment came down upon the agitators with a heavy hand. The hatchet fell on the Kashmiri Pandits, most of whom were in the employment of the State. A secret circular was issued by the Government, warning the Pandits of severe action in case they or any of their relatives were found to have supported the agitation for self-government. The signatories to the National Demand and the other leaders of the movement were tried and sentenced to various terms of imprisonment. Sheikh Mohammad Abdullah and Pandit Kashyap Bandhu were jailed for six months. Mirza Afzal Beg, and Ghulam Mohammad Sadiq were expelled from the Praja Sabha for a period of five years.

The "National Demand" underlined certain broad principles which the State leaders claimed, could form the basis future constitutional reform in the State.

> As is well known there is a nation-wide movement afoot among the people of Jammu and Kashmir State, to bring about a complete change in the social and political outlook

[19] *Ibid.*, 14th August, 1938.

of the people. This movement is not confined to any particular community or section of the public but all classes of people have begun participating in it with fullest consciousness of the issues it involves. But we do make it perfectly clear at the very outset that our loyalty to His Highness' Person and throne is unswerving and needs no reiteration. The ultimate political goal of this movement is the achievement of complete responsible government under the aegis of His Highness the Maharaja Bahadur. But as sponsors of this national movement, we feel that it is our bounden duty to acquaint all our countrymen as also others who are interested in it of the immediate objective we have in view.[20]

The manifesto envisaged the demand that the Government in the State be reorganised to incorporate the principle of administrative responsibility, separate and qualified franchise be abolished and substituted by universal adult franchise and weightage be given to the minorities for their legitimate interests. The manifesto demanded that the people be ensured the basic rights to life, liberty and property, freedom of speech, expressions, and association and the right to legal remedies against any arbitary action of the State.[21] The manifesto read:

Our cause is both righteous and reasonable and just. We want to be the makers of our own destiny and we want to shape the ends of things according to our choice, of course, under the august patronage of His Highness. This we cannot do, so long as a healthy change is not effected in the present system of Government. We have also come to the conclusion that without such a change it is impossible for the communities individually or the country collectively to progress. We are, therefore, of this firm belief, that the Government of His Highness should, before long, be modelled on the following lines:

[20] *National Demand*, 1938, Published by All India States Peoples Conference, Bombay.

[21] *Ibid.*, National Demand, p. 1-3.

(a) The present system of administration in the State shall be replaced by Responsible Government subject to the general control and residuary powers of His Highness the Maharaja Bahadur as hereinafter mentioned;

(b) The Ministry shall be responsible to the Jammu and Kashmir Legislature and shall have, subject to such responsibility, power to control the expenditure of the revenues of the State and also to make such grants and appropriation of any part of those revenues or of any other property which is at present under the control or disposal of the Council as reserved expenditure, save and except the following which shall remain under the control of His Highness the Maharaja Bahadur:

(i) Expenditure of the Military Services

(ii) Expenditure classed as Political and Foreign

(iii) Payments of all debts and liabilities hitherto lawfully contracted and incurred by His Highness in-Council on account of Government of Kashmir

(iv) The Dharmarth Trust

(c) The principle of responsibility to the Legislature shall be introduced in all the branches of administration of the Government subject to general control, reservations and residuary powers vested in His Highness in respect of control of Military, Foreign and Political Affairs etc. provided that the proposal of His Highness for appropriations of any revenues or moneys for Military or other expenditure for Foreign and Political purposes shall be submitted to the vote of the Legislature, but that His Highess shall have power not withstanding the vote of the Assembly to appropriate upto a fixed maximum any sum His Highness may consider necessary for such expenditure;

(d) The Legislature shall consist entirely of members elected by Constituencies formed on the system of the adult franchise. Provision should be made for the representation of labour, trade, landlords and educational interests in the Legislature by means of election;

(e) The election to the Legislature shall be made on the basis of joint-electorates! seats shall be reserved for the minorities, and all other safeguards and weightages

should be guaranteed to them in the constitution for the protection of their legitimate linguistic, religions, cultural, political and economic rights according to the principles enunciated, accepted or acted upon by the Indian National Congress from time to time. In addition to the above the religious rights and sentiments of all the communities should always be respected and not interfered with;

(f) All the subjects of the State, without distinction of creed and caste shall be admitted for services in all armies of defence and for that purpose His Highness shall be assisted by a Minister responsible to the Assembly;

(g) No subject of His Highness shall be liable to suffer in liberty, life, property or of associations and free speech or in respect of writing except under sentence by an ordinary court of justice and as a result of lawful and open trial.[22]

In March 1939, the annual session of the Indian National Congress was held at Tripura. A delegation of the State leaders which included Sheikh Mohammad Abdullah, Bakhshi Ghulam Mohamad, Pandit Kashyap Bandhu, Pandit Prem Nath Bazaz, and Mulana Sayeed Masoodi, was specially invited by the Congress President to attend the session. Tripura brought the State leaders closer to the Congress. The Congress leaders acclaimed the struggle of the State's people for self-government and extended whole-hearted support to Sheikh Mohammad Abdullah and his colleagues in their quest for freedom. The State leaders participated in a number of closed door conferences, in which Pandit Nehru and other senior Congress leaders and the leaders from the Princely States took part. In fact, the Congress strategy with regard to the political movement in the States was given final shape at Tripura. The Princes were the most delicate and the difficult part of the intricate political organisation, the Congress leaders had to grapple with. The rise of communalism was bound to have its impact on the politics in the States as well, and the Congress

[22] *Ibid.*

leaders were aware of the damage it could cause to the political and constitutional development in the States. The Muslim League had already entered the contest for precedence in the States and the Princes, who were hardly ready to countenance any poltical reforms in India, were keen to turn to their advantage, the confrontation which the League had forced on the Congress. The Muslim League took its own way to deal with the States. The League had scrupulously avoided to commit itself to any line of action against the Princes and had assumed indifference towards any movement for political reforms in the States. The League had little advantage in extending support to the States People, for the Indian States except Kashmir, had overwhelming Hindu majorities and the League was the least anxious about what happened to them. Any support extended to the States peoples would, on the other hand hit the few Muslim Nawabs, including the ruler of Hyderabad who also ruled Hindu majorities. The League had no reason to antagonise the Hindu rulers and dislodge the Muslim Nawabs but had a vicarious interest in supporting the Maharajas and the Nawabs. It could use them to intimidate the Congress when the time came to balkanise and divide India. As the distrust between the Muslim Conference and the Dogras deepened and the Indian Government gradually wheeled round to support the State Government, the League was driven to the fence. The State leaders clearly saw the identity of the goals they idealised and the ideals the Indian National Congress sought to achieve. The movement in the State represented the upsurge of the people of the State against the servitude the Indian Princedom symbolised, and therefore was a part of the struggle of the Indian people against the British dominance.

On April 27, shortly after the Tripura Congress, the Working Committee of the Muslim Conference appointed a sub-committee to formulate proposals on the resolution, the Working Committee had adopted in regard to the extension of its membership to all the people of the State.[23] The sub-committee was constituted of Bakhshi Gulam Mohamad, Maulana Masoodi and Khwaja Gulam Mohamad Sadiq. Sadiq was appointed the Chairman of the Committee. On

[23] Working Committee Resolution No. 5, 27th April, 1939.

June 10, the sub-committee presented its report to the General Council of the Conference along with the draft of the amendments it proposed in the Constitution of the Conference. The Committee recommended that the Muslim Conference be renamed as "All Jammu and Kashmir National Conference", and the membership of the Conference be opened to all classes of the people in the State, irrespective of their caste, creed and religion. The Committee further recommended that objectives which the Conference sought to achieve, be redefined to cover wider national aspirations, responsible government and the right to freedom.[24] The General Council accepted the recommendations of the Committee and resolved that the recommendations of the Committee be submitted to a special session of the Conference. The next day, the special session of the Conference was convened to consider the report of the Committee and the recommendations of the General Council. The same day, the Conference approved the amendments recommended by the General Council after a long and stormy debate. The President of the Conference was authorised to nominate members from the other communities to the Working Committee and the General Council of the Conference.[25]

[24] The Report of the Sub-committee of the Muslim Conference Working Committee appointed on 27th April, 1939

[25] Resolution of the Muslim Conference passed in its special session, 11th June, 1939.

Chapter 6

Constitution Act-1939

In 1939, the Maharaja ordered the repeal of the Constitution Act of 1934, and promulgated a new Constitution Act for the government of the State.[1] The new Constitutional provisions were aimed to placate the rising temper of the people in the State and their incessant demand for self-government. The broad principles which the Constitution Act underlined did not differ substantially from the provisions of the Constitution Act of 1934 except that the law relating to the High Court was incorporated in the Act and the number of elected members in the Praja Sabha was increased to forty. The Maharaja retained the inherent powers of the prerogative. As a matter of fact, the new enactment did not envisage any devolution of authority, which in effect continued to be centralised in the hands of the Maharaja. The reserved subjects were, however, redefined to include:[2]

[1] Jammu and Kashmir Constitution Act, 1939.

[2] *Ibid.*, Sec. 12.

(i) the Maharaja, his family and his household;
(ii) external relations, treaties, conventions and agreements between the State and the British Government and the Government of India or with foreign powers or the government of any State in India;
(iii) matters of Frontier policy including those relating to Ladakh and Gilgit;
(iv) matters relating to the Jagirs of Poonch and Chinani;
(v) rights specifically granted to Illaqadars or Jagirdars by their Sanads;
(vi) Armed Forces;
(vii) the Departments declared by the Maharaja from time to time to be the Hazur Departments;
(viii) Dharmarth Trust;
(ix) provisions of the Constitution Act; and
(x) such other matters as were specified by the Maharaja.

The Constitution Act provided for a legislative body constituted of the Maharaja and a chamber known as the Praja Sabha. The membership of the Sabha was fixed at seventy-five. Forty of the members were to be elected. The members of the Council of Ministers retained their ex-officio position in the Sabha which they held under the Constitution Act of 1934. The Maharaja reserved to himself the powers to appoint official members and members representing certain special constituencies. The Maharaja also reserved the power to nominate two members to the Assembly for having special knowledge and experience of the subject matter of a Bill pending before the Sabha for the period the Bill remained under consideration of the Sabha.[3]

The tenure of the Praja Sabha was fixed at three years, subject to the condition that the Maharaja could dissolve the Praja Sabha earlier or extend its term in special circumstances. The Maharaja reserved the right to fix the date, not later than six months after the expiry of the Praja Sabha or of its dissolution, for its next session. The Maharaja also reserved

[3] *Ibid.*, Sec. 14.

the right to summon the Praja Sabha and prorogue it. Communications from the Maharaja to the Praja Sabha could be made by him in person or by messages sent through the Prime Minister or any other Minister and by messages sent through the President of the Praja Sabha. Communications from the Praja Sabha to the Maharaja, could be made by as formal address, preferred through the President of the Sabha after a resolution was moved to that effect and passed by the Praja Sabha.[4]

The Maharaja reserved to himself the power to appoint the President of the Sabha, remove him from office and fix the term of his office. Powers were vested with the Prajà Sabha to choose from among its members the Deputy President of the Sabha. The Deputy President was liable to be removed from his office by a resolution of the Sabha passed by a majority of its members. The Maharaja also reserved to himself the power to appoint Under Secretaries, from among the members of the Sabha. The Under Secretaries were to be attached to one or more Ministers and assigned such duties which related to the business in the Sabha.[5]

The Praja Sabha was empowered to legislate for the entire State and for the subjects not reserved for the Maharaja. The Sabha was, however, not empowered to undertake any legislation which affected the religious rights, usages, endowments or personal law of any community without the previous sanction of the Maharaja and no such measure could be deemed to have been passed by the Sabha unless two-third of the members of the Sabha from the community affected, were present in the Sabha and voted in favour of the measure.[6]

The Sabha was subject to a number of severe limitations. They were:[7]

(i) the Sabha could not deal with and consider any matter which was included in the reserved subjects;
(ii) in case the Prime Minister of the State certified that

[4] *Ibid.*, Sec. 16 and Sec. 17.
[5] *Ibid.*, Sec. 19 and Sec. 22.
[6] *Ibid.*, Sec. 23 and Sec. 24.
[7] *Ibid.*, Sec. 35.

the introduction of a Bill, discussion on it or an amendment moved to it or a resolution passed on it, was likely to affect the safety or the tranquility of the State, he could direct the stoppage of the proceedings on the Bill;

(iii) where the Praja Sabha refused leave to introduce a bill or fail to pass it in the form recommended by the Council, the Maharaja reserved the power to declare the provisions of the Bill essential for the good government and tranquility of the State; and

(iv) The Praja Sabha was precluded to repeal or alter any ordinance, promulgated by the Maharaja.

With regard to finances, the provisions of the Act vested wider powers in the Sabha than the powers which were vested with the Sabha under the Constitution Act of 1934. The Council of Ministers was required to present before the Sabha the Annual Financial Statement of the revenues and expenditure. The "Expenditure charged upon the revenues of the State" and the "Expenditure proposed to be met from the revenues of the State" were to be separately shown in the Financial Statement. The Praja Sabha was empowered to vote on the "Expenditure proposed to be met from the revenues of the State". The "Expenditure charged upon the revenues of the State" included the expenditure on reserved subjects; contribution payable to other Governments; expenditure obligatory under any law; interest on loans and sinking fund charges; expenditure declared by the Maharaja or the Council as political; pensions, grants and scholarships; salaries of the Judges of the High Court and the members of the Board of the Judicial Advisors; salaries of such officers as the Maharaja specified and such other expenditures which were specified so from time to time.[8] The Prime Minister of the State was vested with the final authority to determine whether any proposed expenditure was charged on the revenues of the State. Over-riding powers were also reserved by the Maharaja for himself to authorise such expenditure as was found necessary for the safety and the tranquility of the State. The Council was em-

[8] *Ibid.*, Sec. 41 and Sec. 42.

powered to authorise expenditure of demands, votable by the Sabha, in case the Sabha failed to pass the demands. Bills or amendments, providing for the imposition, increase or decrease of taxes; the regulations of the borrowing of money; grant of any guarantee by the Council; the amendment of any law with respect to any financial obligation undertaken by the Council and for the specification of any expenditure charged on the revenues of the State, could only be introduced or moved in the Assembly after the previous sanction of the Prime Minister had been secured.[9]

All Bills passed by the Praja Sabha were required to be submitted to the Maharaja for his assent. The Maharaja retained the power to give his assent to a Bill or withhold it. In case he refused his assent to a Bill, it automatically fell through. The Prime Minister was empowered to return a Bill for the reconsideration of the Sabha with or without amendments before it was submitted by him to the Maharaja for his assent.[10]

The Praja Sabha was not vested with the powers to make rules for the conduct of its business and procedure. Instead the power to make rules was vested with Council of Ministers.[11] The Council was empowered to make rules with regard to:

(i) the term of the office of the nominated members of the Praja Sabha;
(ii) the manner in which persons were nominated to the Praja Sabha;
(iii) the qualifications for enfranchisement, delimitation of the constituencies, the process and method of the elections;
(iv) the qualification of the members of the Praja Sabha;
(v) the determination of the disputes with regard to the validity of elections;
(vi) prevention of corrupt practices in elections;
(vii) regulation of the course of business and preservation of order in the Assembly;

[9] *Ibid.*, Sec. 47.
[10] *Ibid.*, Sec. 31.
[11] *Ibid.*, Sec. 12.

(viii) regulation of question and discussion on any subject specified in the rules;
(ix) procedure for the presentation of the Budget;
(x) duties of the Under Secretaries of the Praja Sabha; and
(xi) the execution of the provisions of the Constitution Act.

The Constitution Act incorporated provisions of the law pertaining to the High Court in the State.[12] The High Court was to be constituted of the Chief Justice and two or more Judges, as the Maharaja would appoint from time to time. The Judges were liable to be removed from their office by an order of the Maharaja, for misbehaviour or infirmity of mind or body. The Chief Justice was placed in a position of precedence over the other judges of the Court. The Chief Justice and the other judges of the Court were entitled to receive such salaries and allowances as were fixed by the Maharaja from time to time. A person could be appointed the Judge of the High Court in case he:

(i) was a Barrister of England or Ireland or a member of the Faculty of Advocates in Scotland, of not less than ten years standing; or
(ii) held a Judical office in the State, not inferior to that of a District Judge; or
(iii) had at least held a Judical office at least for five years not inferior to that of a subordinate judge or the judge of a Small Causes Court in the State; or
(iv) was an advocate of the High Court in British India, or a law-graduate of any recognised University in India, who had been practising as an advocate of the High Court or of any High Court in British India for a period of at least ten years.

The original jurisdiction of the Court extended to all cases of which the value was of ten thousand rupees or more. The appellate jurisdiction of the Court extended to the appeals and revisions in civil, revenue and criminal cases with regard to which the Court had competence under any existing law in

[12] *Ibid.*, Sec. 48.

force. The Court was vested with the powers of a Court of Record. It was also empowered to try and punish cases contempt.[13]

Subject to the sanction of the Council the Court was authorised to frame rules to:

(i) regulate its own practices;
(ii) to provide for the forms to be used;
(iii) to promote efficiency of the judicial and its ministerial offices; and
(iv) to prescribe qualifications for Advocates, Vakils and the Attornies and provide for their removal or suspension from practice.[14]

Subject to the rules made by the Maharaja, the High Court was vested with the power of superintendence and control over all subordinate courts in the State. The Chief Justice and the other Judges of the Court were authorised to visit and inspect the proceedings of all subordinate courts and issue necessary directions to them. The Court was authorised to make rules to regulate the practice of the subordinate courts, provide for the forms to be used in these courts and provide for the inspection of these courts and the supervision of their work.[15]

The Constitution Act provided for the establishment of a Board of Judicial Advisors.[16] The Maharaja retained in himself the highest judicial authority and constituted in himself the highest court of appeal. Obviously, the Maharaja superseded the High Court. The Board of Judicial Advisors was constituted to advise the Maharaja in cases which came up before him in appeal. The institution of the Board did not affect the inherent powers of the Maharaja.

The Board was to be composed of as many members as the Maharaja appointed on it. The term of office of the members of the Board, their salaries and the condition of their service were to be determined by the Maharaja. The Maha-

[13] *Ibid.*, Sec. 56.
[14] *Ibid.*, Sec. 67.
[15] *Ibid.*, Sec. 64.
[16] *Ibid.*, Sec. 71.

raja reserved the right to make rules to regulate the procedure regarding the filing of the appeals, the place and period of the sittings of the Board and the hearing of the appeals by the Board.

The new Constitution Act did not envisage any radical reforms in the government of the State. The reforms, evidently, bore the burden of the fast changing political situation in the State. The conversion of the Muslim Conference into National Conference was a favourable, though challenging development. The emergence of the National Conference ended the long contest in the various community movements in the State and portended a joint and secular struggle for political reforms. Obviously, neither the British nor the Dogras could overlook the revolutionary import of these developments, but because of the outbreak of the Second World War, the issues were relegated into the background.

On March 21, 1940, the Muslim League at its annual session in Lahore, adopted the resolution for the division of India and the creation of a separate independent state for the Muslims in India. The resolution for the division of India and the creation of Pakistan brought the simmering communal contest in India to the surface. The attack of the Muslim League, pointed and ruthless, broke up the Indian mind and ultimately drove the Muslims out of a united India. The League resolution had a deep impact on the political movements in the State. The League organised a parallel States' People Organisation "The All India States Muslim League", to co-ordinate the Muslim movements in the States. The meeting of the All States Muslim League was convened in Lahore, during the days the Muslim League was in its annual session. The States Muslim League endorsed the League resolution for the division of India.

The National Conference leadership repudiated the League resolution for the division of India and the separation of the Muslim majority regions. The Conference did not consider it feasible or expedient to accept the League resolution nor did it favour the acceptance of the resolutions of the States Muslim League on the future Constitutional pattern of the Indian States. The Conference leadership rejected the formulations of the League with regard to the constitutional reform in the

States.[17] Sheikh Mohammad Abdullah attended the session of the States Muslim League as an observer. After he returned to Srinagar he launched a frontal attack on the resolutions of the States Muslim League. He rejected the proposal for the division of the country and the separation of the Muslim majorities and called upon the Muslims in India to join the Indian National Congress, which he declared, was the only representative organisation of the peoples of India.

In the aftermath of the Muslim League session at Lahore a number of Muslim leaders, most of them from Jammu, dissociated themselves from the National Conference. A sizeable section of Muslim Conference leadership had already remained out of the new organisation when the Muslim Conference had been dissolved in June, 1939. The Parliamentary Party of the National Conference in the Praja Sabha also broke up. Chowdhry Hamidullah, who had broken away from the Conference, left the Parliamentary Party with his supporters and formed a separate group in the Sabha. Shortly after, Chowdhry Ghulam Abbas resigned from the Conference. On 13th June, 1941, the Muslim Conference was revived in Srinagar. Chowdhry Ghulam Abbas, Abdul Majid Qureshi, Chowdhry Abdullah Walli and Chowdhry Mohammad Amin pledged their support to the Muslim Conference. In July, Chowdhry Ghulam Abbas was nominated to the Working Committee of the States Muslim League. A few days after, the Muslim Conference declared its acceptance of the League resolution for the division of India and the creation of Pakistan.

The disintegration of the parliamentary party of the National Conference in the Sabha weakened the Conference Party which was left with only ten members after the split. Taking advantage of the situation, the Council amended the rules of procedure of the Sabha and assumed over-riding powers over its function. In the meanwhile severe difference set in between the Conference leadership and the Government on the introduction of the Dev-Nagri or the two-script medium of instruction in the schools and the promulgation of the Arms Act.

In June, 1941, the Working Committee of the National

[17] Rashid Taseer, Tabreek Huryat Kashmir, Vern. Vol. II P. 80.

Conference instructed the members of the Conference Parliamentary Party to resign from the Sabha.[18] The following reasons were listed by the Working Committee for the action it recommended:

(i) the modifications introduced by the Government in the Rules of procedure of the Praja Sabha which gave arbitrary powers to the Prime Minister;
(ii) the introduction of the Dev-Nagri script or the two-script medium in the schools; and
(iii) the special concessions provided to the Rajputs and Hindus by the provisions of the Arms Act.

In the last week of July, the members of the National Conference Parliamentary Party in the Sabha submitted their resignation. The resignation of the leader of the party, Mian Ahmad Yar was accepted forthwith. The resignations submitted by the other members were, however, refused on the ground that fresh elections could not be held due to the situation created by the outbreak of the war.

[18] *Ibid.*, P. 162.

Chapter 7

Quest for Settlement

Cripps Mission

With the onset of the Second World War, the sea which the Britanic Majesty had ruled for a century, rolled up and swept the shores of England. The foundations of the intricate balance of power, upon which the British had poised themselves for a century, crumbled down within a year of the outbreak of the war. The Congress Working Committee met in August, 1940, and offered to help the British in their war effort on the condition that the British Government recognised the right of the Indian people to independence and accepted to set up a National Government in India for the time the war continued. The British turned down the offer. The Viceroy made a significant statement in which he expressed the inability of the British Government to accept the Congress offer on the ground that the British were not prepared to ignore the interests of the minorities in India and the rulers of the Princely

States. The Viceroy stated:[3]

> "It goes without saying that they could not contemplate the transfer of their present responsibilities for the peace and welfare of India to any system of Government whose authority is directly denied by large and powerful elements in India's national life. Nor could they be parties to the coercion of such elements into submission to such a government."

Obviously, the British wanted to avoid to make any substantive commitments to the Congress and build up defences to frustrate any efforts, the Congress made to find a settlement of the Indian problem.

In reply, the Congress launched a half-hearted and purposeless civil disobedience movement aimed to register moral protest of the Indian people against the British intransigence. The civil disobedience movement made little impression on the Government of India. Instead, most of the Congress leaders found themselves locked up in jails at the most crucial hour of the history of their country.

The stalemate did not last long. Japan's entry into the war jolted the British out of their complacency. The Congress leaders were equally shocked. Gandhi promptly ordered the suspension of the civil disobedience movement. On March 11,1942, the British Prime Minister made an announcement in the Parliament that the War Cabinet had decided to send a member of the Cabinet to India with proposals for the solution of the Indian problem. Sir Stafford Cripps was deputed for the task. He reached India on 22nd March.

The proposals which Stafford Cripps brought with him envisaged:

> His Majesty's Government having considered the anxieties expressed in this country and in India as to the fulfilment of promise made in regard to the future of India, have decided to lay down in precise and clear terms the steps which they propose shall be taken for the earliest possible

[1] Statement of the Viceroy, August 8, 1940.

realisation of self-government in India. The object is the creation of a new Indian Union which shall constitute a Dominion associated with the United Kingdom and other Dominions by a common allegiance to the Crown but equal to them in every respect, and in no way subordinate in any aspect of its domestic and external affairs.

The operative part of the proposals envisaged:

(a) immediately upon the cessation of hostilities, steps shall be taken to set up in India in manner prescribed hereafter an elected body charged with the task of framing a new Constitution for India;

(b) provisions shall be made, as set out below, for participation of the Indian States in the Constitution making body;

(c) His Majesty's Government undertake to accept and implement forthwith the constitution so framed subject only to:

(i) the right of any province of British India that is not prepared to accept the new constitution to retain its present constitutional position, provision being made for its subsequent accession if it so decides.

With such non-acceding provinces, should they so desire, His Majesty's Government will be prepared to agree upon a new constitution giving them the same full status as the Indian Union and arrived at by a procedure analogous to that here laid down;

(ii) the signing of a treaty which shall be negotiated between His Majesty's Government and the constitution-making body. This treaty will cover all necessary matters arising out of the complete transfer of responsibility from British to Indian hands; it will make provisions, in accordance with undertakings given by His Majesty's Government, for the protection of racial and religious minorities; but will not impose any restrictions on the power of the Indian Union to decide in future its relationship to other member States of the British Commonwealth.

Whether or not an Indian State elects to adhere to the Constitution it will be necessary to negotiate a

revision of its treaty arrangements so far as this may be required in the new situation.

(d) The Constitution making body shall be composed as follows: Unless the leaders of Indian Opinion in the principal communities agree upon some other form before the end of hostilities.

Immediately upon the result being known of provincial elections which will be necessary at the end of hostiltiies, the entire membership of the lower house of provincial legislatures shall as a single electoral college proceed to the election of the Constitution-making Body by the system of proportional representation. This new body shall be in number about one-tenth of the member of the electoral college.

Indian States shall be invited to appoint representatives of British India as a whole, and with the same powers as British Indian members.

(e) During the critical period which now faces India and until the new constitution can be framed His Majesty's Government must inevitably bear the responsibility for and retain the control and direction of the defence of India as a part of their world war effort, but the task of organising to the full, the military, moral and material resources of India must be the responsibility of the Government of India with the cooperation of the people of India. His Majesty's Government desire and invite the immcdiate and effective participation of the leaders of the principal sections of the Indian people in the counsels of their country of the commonwealth and of the United Nations. They thus will be enabled to give their active and constructive help in the discharge of a task which is vital and essential for the future of India.

Maharaja Hari Singh made certain interesting observations on the Cripps proposals. The position, his State had in India, was different from that the other Princely States had. He visualised the import, the Cripps offer had, and probably saw through the plot the British intended to lay about. Hari Singh, indeed was a part of the Empire, but he, and in fact, none of the Princes would accept liquidation. He stated:

On the part of the States, a considerable factor in the Indian policy and an important party to be satisfied, there has been a tendency even within recent weeks to give prominence to the credo of relations to the Crown. These relations have so far been maintained through and effected by a Department set up by the will of the Crown, the policy and the practice of the Department being determined by the Crown's functionaries. Logically, therefore it would seem that the Princes cannot object to having dealings with a Central Government of India which the Crown may constitute. Nor have they any reason to assume that they would not get a square deal from such a Government. Commenting on the position of the princes, Hari Singh observed:

In promising to support the proposals brought by Sir Stafford Cripps, the Chamber of Princes added the proviso that the support should be without prejudice to the right of individual States to lay their case before him and generally without prejudice to the inherent rights of the States. These rights, it is not easy to define or catalogue, when one considers the effect of the political practice inaugurated in 1860 and since maintained with the aid of 'usage and sufferance'. In any case,th ere is a poignant irony in the contrast between the Princes' reiteration of the phrase, 'Treaty Rights' and the Viceroy's suggestion that all Princes, for certain purposes, should voluntarily abdicate in favour of the Political Officers accredited to their Courts.'

On 14th April, 1942, Gopalaswami Ayangar made a statement in Praja Sabha which sought to clarify the stand, the Maharaja and his Government had taken on the Cripps Mission. Ayangar told the members of the Sabha that the Maharaja disfavoured the division of India and the separation of the provinces or the States on any political or economic grounds. Ayangar told the Sabha that the people of the State would oppose every suggestion and step aimed to break up the country. In fact, the Maharaja took the opportunity to put all doubts at rest about his attitude towards the division of the country and the creation of a separate Muslim State in India. Hari Singh was, indeed the less conservative among

the Princes and felt equally frightened at the overt suggestion Cripps had made with regard to the liberalisation of the government in the States. But he had his own reasons to raise his voice against a possible division of the country. He realised the consequences of the separation of Muslim majority areas and the impact such an eventuality would have on the future on his State. His State had in fact, been marked for inclusion in the Muslim State, the Muslim League proposed to create. He could foresee the danger he would be placed in, if a new dominion, agressively communal in outlook was established along the borders of his State. His consternation was deeper in view of the composition of the population of his State which was predominantly Muslim.

Among the Princes in general, the Cripps proposals created a flutter. The Princes knew that there was hardly any chance for the Cripps Mission to succeed and even if it did, they knew, there position would not be prejudiced, but they were concerned and alarmed about the fact that, whenever the negotiations would be resumed between the British government and the Indian leaders, they would start from where Cripps had fallen off. The Indian States Delegation, after its discussions with Sir Stafford Cripps, adopted the following resolution:

> The attitude of the Indian States in general of the Mission of the Lord Privey Seal is summed up in the resolution on the subject which was adopted unanimously at the recent session of the Chamber of Princes. The Indian States will be glad as always, in the interest of the motherland, to make their contribution, in every reasonable manner compatible with the sovereignty and integrity of the States, towards the framing of a new constitution for India.
>
> The States should be assured, however, that in the event of a number of States not finding it feasible to adhere, the non-adhering States or groups of States so desiring should have the right to form a union of their own, with full sovereign status in accordance with a suitable and agreed procedure divised for the purpose.[2]

[2] Jan Sahib of Nawanagar to Sir S. Cripps, September, 10,1942.

In its resolution the Chamber of Princes had demanded effective protection of their 'rights arising from treaties and Sanads' and guarantees for the sovereignty and the autonomy the States enjoyed.

The other reason for the princes to get alarmed and in fact, the more important one, was the overt suggestion, that Cripps made for the constitutional and administrative reforms in the States. Some of them were avowedly vocal and gave vent to their unwholesome feelings with akward vehemence. Maharaja Hari Singh was also one of them. The Secretary of the Crown Representative wrote to the India Office:[3]

> His Excellency the Crown Representative has little doubt that such concern and misgivings are in fact genuinely entertained by the great majority of Indian Princes, particularly by the more conservative among them, and is not inclined to attach any great importance to such public declarations in the opposite sense as have been made by their Highnesses of Kashmir and Indore. The Princes may to some extent derive comfort and re-assurance from the generous terms in which His Majesty has referred in his message to India published on the 13th June, 1942 to 'their traditions of loyalty and attachment to his Throne' and to their unstinting offers of men and money and personal services for the war. But they are not likely to be reassured by a reference, to the fact that Sir Stafford Cripps offer was in terms withdrawn when the negotiations broke down. The Princes probably feel that should negotiations be resumed in the event of the great political parties in British India showing a more responsive attitude, the Cripps declaration would certainly form the starting point of such negotiations and would be regarded as the minimum measure of concession and advance open to discussion.
>
> In particular, perplexity is expressed in para 11(a) of the Chancellor's letter with regard to the statement made by thc Lord Privy Seal in the House of Commons to the effect that he was "certain that this House would

[3] Letter from Secretary to the Viceroy to the India Office, June, 25, 1942.

wish the British Administration in India to do all it can to encourage and expedite the development of suitable representative institutions in all Indian States."

Cripps did not offer anything tangible to the Indians. Instead, his scheme envisaged the acceptance of the various communal claims in India for the division of India. One third of the membership in the proposed Constituent Assembly was reserved for the Princes. Joined with communal minorities, vested interests and the fifth column the British had so well planted all over the sub-continent, the Princes, were in effect, vested wtth the ultimate veto on the future of the Indian Nation. Referring to the problem of the States, the Working Committee of the Congress said in its resolution dated 2nd April, 1942:

> The complete ignoring of ninety millions of people in the Indian states, and their treatment as commodities at the disposal of their rulers, is a negation both of democracy and self determination. While the representation of an Indian State in the constitution-making body is fixed on a population basis, the people of the State have no voice in choosing those representatives, nor are they to be consulted at any stage while decisions vitally affecting them are being taken. Such states may in many ways become barriers to the growth of Indian freedom, enclaves where foreign authority still prevails and where the possibility of maintaining foreign armed forces has been stated to be a likely contingency and a perpetual menace to the freedom of the people of the states as well as of the rest of India.[4]

The Cripps Mission was a fake attempt at finding a solution of the political problems in India. In fact, neither the British Government nor the Government of India, was prepared to go as far as Cripps. Congress rejected the scheme. So did the Muslim League.

[4] Congress Working Committee Resolution, dated 2nd April, 1942.

Naya Kashmir

In July, 1943, the Maharaja appointed a high power enquiry commission to review the working of the Constitution of the State.[5] Rai Bahadur Ganga Nath, the Chief Justice of the State High Court and the President of the Praja Sabha was appointed the Chairman of the Commission. The Commission was asked to make recommendations to secure 'the safety, integrity and security of the State' and an efficient and progressive character of its administration. It was also asked to recommend measures with regard to:

(i) the development of the economic resources of the State and its people leading to a higher and healtheir standard of life;
(ii) the increasing representation of the State-Subjects in the administrative services of the Government;
(iii) the adoption of ways and means to check corruption;
(iv) the uplift of the rural areas; and
(v) the economic rehabilitation of the frontier districts of Ladakh and Gilgit.[6]

The Commission invited all political parties in the State to send their representatives to participate in its deliberations. National Conference was also asked to send its representative to participate in the work of the Commission.

In August, the Working Committee of the National Conference considered the invitation of the Government to participate in the deliberations of the Commission. The Committee expressed dissatisfaction with the terms of the reference of the Commission. The Committee pointed out that the terms of reference covered an unnecessarily wide area of investigation and did not include any specific directives for political end economic reform. The Committee concluded that the Conference sought to achieve responsible government under the aegis of the Maharaja and since the terms of reference of the

[5] Command of Maharaja Hari Singh, Dated 12 July, 1943, Government Gazette, dated 15th July, 1943.
[6] *Ibid.* P. 10.

Commission did not envisage consideration of any such measure, the appointment of the Commission was not a satisfactory solution of the constitutional problem of the State. The Committee however, decided to cooperate with the Commission and send its representatives to participate in its work.

The deliberations of the Commission, were, protracted and irregular as a result of which much of the enthusiasm with which the Commission started, died down. The National Conference recalled its representative from the Commission. Those very days the conference evolved a programme of reform and reconstruction for the State and submitted it to the Commission for its consideration. The Commission, however, found itself unable to accept any of the suggestions envisaged in the programme.

Rai Bahadur Ganga Nath submitted to the Maharaja, a long and detailed report on the social, economic and political conditions of the State. The report described in detail the working of the existing constitutional provisions, franchise and local government. Inspite of the fact, that the commission was charged with the task of assessing the utility of the constitutional provisions, the commission confined itself to a survey study and avoided to pronounce any judgement on the organisation of the State Government and its operatives. The Chairman of the Commission remained pathetically apologetic and in effect sought to legitimise the many structural and functional defects in the State Government. In his report Ganga Nath observed:

> The Command enjoins us to investigate into the working of the existing constitution with reference to the proceedings of the Praja Sabha and the amount of interest displayed by the State Subjects and the political experience gained by them in relation thereto. From the description of the constitution of the Praja Sabha given in Part two of our report, it will be observed that it has a majority of elected elements and that though it has to face an irremovable executive it still has sufficient powers at its disposal to enable it to make an impression on the executive if it so chooses. These powers follow the same

> lines as of any other deliberative assembly, namely; powers of interpellation, power of moving resolutions and passing bills, control over financial matters, and powers of censure. It is true that these powers are circumscribed by certain reserved functions but though, there may be a difference in the extent of these powers there is no difference in their nature.[7]

The one defect the Commission was able to locate in the existing constitutional provisions, was pertaining to the extent of franchise for the special constituencies and with regard to women. The Commission observed:

> There are, however, a few defects in the present franchise to which we feel bound to refer. Seven members of special constituencies are elected by 1,204 electors; as against this 33 members of general constituencies are elected by more than two lakhs of the population. This disparity in numbers is in our view unusually striking. The present franchise is based for too much on possession of property, holding of pensions from Government holding offices in villages or having rendered services to Government. While we conclude that there are elements which deserve some recognition we feel that the recognition of these interests should be proportionate to a due recognition of the interests of the general population. The limitation of franchise in regard to women, to those who have passed middle school examination has in our view failed to secure due representation of that important element in the general population, a fact which has been accentuated by the absence of any nomination of a representative of that sex.[8]

With regard to the memorandum submitted to the Maharaja by the National Conference, the Commission made certain interesting observations:

[7] Ganga Nath Commission Report P. 439 MS. No. 605, Archives Repository, Srinagar Government of Jammu and Kashmir.

[8] *Ibid.*, p. 449.

> Our attention has also been drawn to the memorandum submitted by the All Jammu and Kashmir National Conference to His Highness containing a draft constitution of the State and an outline economic plan for the development of the State. We are precluded by our terms of reference from expressing our opinion on the bigger constitutional and political issues raised in the memorandum. In our view it is premature to consider and devise the framing of a constitution for the state without knowing exactly what shape or form the discussions on the future constitution of India will take; to ignore those discussions and their bearing on the relationship of this state with the rest of India would be tantamount to losing sight of a fundamental factor in the consideration of the problem. We feel, however, bound to state that the whole basis of this memorandum is vitiated by a characteristic misreading of history and a prejudicial view of existing conditions. The platitudes with which the memorandum has been embellished are hardly conducive to a constructive approach to the problems with which the state is faced, while the final solution of the problem adumbrated in it is marked by a wholly inappropriate vaulting ambition which has patent risks of over leaping itself.[9]

In February, 1944, the programme which the National Conference had submitted to the Ganga Nath Commission, was adopted by it as its Manifesto. The programme was named "Naya Kashmir" and published.[10] In his presidential address to the annual Session of the Conference, Sheikh Mohamad Abdullah said:

> The Working Committee of the National Conference which always has its hand on the pulse of the people, feels that at this time when political and economic systems are in the melting pot and ideas of a new World Order are being debated, it too must formulate more correctly its own conception of the New Kashmir it strives to build.

[9] *Ibid.*, P. 455.

[10] Resolution of the Working Committee of the National Conference, dated 20th February, 1944.

> The National Conference envisages the future of New Kashmir in both political and economic terms. Towards that end we have drawn up a scheme which politically is based on the democratic principle of responsible government, with the elective principle applied from the Local Panchayat right upto the National Assembly. This is linked with the independence of judiciary and the ultimate responsibility of the executive to the people.
>
> In the economic sphere, we have gone on the principle that planned economy is the essence of progress, and without it there can be no raising of the standards of the masses of the State.

The 'Naya Kashmir' plan envisaged a scheme of constitutional reforms for the State, a bill of rights and a frame of representative political institutions besides a national economic plan and a plan for cultural and educational development. The plan pledged to secure the people of the State, right to equality, right to self-determination, emancipation from oppression, poverty and ignorance and superstition and ensure them participation in the historic resurgence of the peoples of the East and the working masses of the world. The preamble of the plan read:

> We, the people of Jammu, Kashmir, Ladakh and the frontier regions, including Poonch and Chinani Ilaqas-commonly known as Jammu and Kashmir State-in order to perfect our Union in the fullest equality and self-determination, to raise ourselves and our children for-ever from the abyss of oppression and poverty, degradation and superstition from medieval darkness and ignorance, into the Sunlit valleys of plenty ruled by freedom science and honest toil, in worthy participation of the historic resurgence of the people of the East and the working masses of the World, and in determination to the make this our Country a dazzling gem upon the snowy bosom of Asia, do propose and propound the following constitution of our State.

The Plan embodied a structure of government for the State based on the principle of executive responsibility. The functions

envisaged for the Ruler were those of a constitutional head. The Plan proposed the institution of a political executive constituted of a Council of Ministers which would be headed by the Prime Minister. The Prime Minister and the other members of the Council would be appointed by the Ruler. The administrative powers of the State would be exercised by the Council.

The Plan further proposed the institution of a National Assembly elected by the people of the State, giving one representative to every forty thousand people. The Deputies in the Assembly would be selected on the basis of universal direct franchise and secret ballot. During the transitional period wheitage would be given to Kashmiri Pandits, Sikhs and the Harijans. The Ruler would be vested with the powers to convene ordinary and extra-ordinary sessions of the Assembly, order its dissolution and order fresh elections. The Ruler would also be vested with the power to:

(i) conduct a referendum on any issue on his initiative or a requisition made by the majority of the members of the National Assembly;
(ii) declare general and partial mobilisation; and
(iii) ratify such treaties with the foreign states as were approved by the National Assembly.

In accordance with the plan, the National Assembly would be vested with the powers to legislate on all subjects except those reserved for the Maharaja. The legislative competence of the Assembly would extend to the following subjects:

(i) representation of the State in its external relations and the conclusion and ratification of treaties;
(ii) alteration of the boundaries of the State;
(iii) defence;
(iv) foreign trade based on state monopolies;
(v) security of the State;
(vi) National Economic Plan;
(vii) administration of banks and industrial establishments;
(viii) agricultural and trading enterprises;
(ix) transport and means of communication;
(x) regulation of currency and monetary credit;

(xi) state insurance;
(xii) state loans;
(xiii) exploitation of the mineral deposits;
(xiv) forests and river waters;
(xv) education;
(xvi) accounting;
(xvii) labour law;
(xviii) citizenship and the rights of the aliens;
(xiv) judiciary, legal and civil codes, legal procedure;
(xx) protection and the development of minorities;
(xxi) archaeological survey, protection of ancient monuments; and
(xxii) the residuary subjects.

The plan envisaged an independent judiciary in the State constituted of a High Court with People's Courts at the District and the Tehsil levels. The judges of the High Court would be elected by the National Assembly for a period of five years and the judges of the People's Courts would be appointed by the High Court for a five year term. The People's Courts would be elected by the people's Panchayats for a term of five years. The High Court would be charged with the power to supervise and direct the judicial functions of the other organs of the government.

The most characteristic feature of the Plan was the elaborate enumeration of the rights, the people of the State would be ensured under the constitutional system the Plan provided for. These rights included, the right to equality, the right to freedom of conscience and worship, the right to freedom of spreech, the right to freedom of press, right to freedom of 'steet processions' and demonstrations, right to privacy of homes and secrecy of correspondence, right to work, right to rest, right to material security in old age, sickness and incapacity, right to education, right to protection of law and the right to move the courts for justice, right to personal property, right of the women to equality of opportunity in all fields of national life and the right to special protection for children and mothers. An interesting aspect of the Bill of Rights, envisaged by the Plan, was the

inclusion of a number of binding obligations to which the people of the State were required to subscribe. These obligations included:

(i) the duty to defend the Constitution of the State;
(ii) to carry out the laws of the State;
(iii) to observe labour discipline, to honestly fulfil social duties and to respect the rules of the community;
(iv) to work in the State, where work was to be 'an obligation and matter of honour to all citizens capable of work;'
(v) the defence of the mother land; and
(vi) compulsory military training and service for all the people of the State.

Dyarchy

In 1944, the Maharaja announced by a proclamation that he had decided to appoint two of his Ministers from among the members of the Praja Sabha. The proclamation stipulated that the Praja Sabha would nominate two of its members by vote, one from each province and from each of the major communities represented in the Sabha, to be appointed to the Council. The Ministers were to function as a part of the Council appointed by the Maharaja and were charged to administer matters which were transferred to them. They were responsible to the Maharaja and remained in office during his pleasure. The appointment of the two Ministers from the Praja Sabha was erroneously called dyarchy for actually no sphere of administrative operation was demarcated for the two Ministers, nor were they constituted into a separate structure of political instruments vested with authority defined by statute. Instead the two Ministers were quitely integrated into the Council of Ministers in office. The reserved subjects remained within the exclusive control of the Maharaja and the subjects placed within the administrative competence of the council were administered by the Ministers under the close and strict supervision of the Prime Minister. The structural frame of the Council was compact and closed. The Prime Ministers, who headed the Council were diehard

bureaucrats endowed with little political foresight and were hardly capable of realising the changes that were under way in the country and the consequent necessity to widen the basis of power and authority. Appointed to their office by the Maharaja and dependent upon him they carried out his orders to the best of their capacity.

Praja Sabha nominated Wazir Ganga Ram from Jammu and Mirza Afzal Beg, the Deputy leader of the National Conference Party in the Sabha, to be appointed on the Council of Ministers. Mirza Beg was entrusted with the portfolios of Public Works and Muncipalities where as Wazir Ganga Ram was appointed the Minister for Education. No sooner the scheme was implemented than the Prime Minister of the State and the other senior officers, perhaps in crude humour, began to carry the scheme to absurd extremes. The Prime Minister, expeditiously informed the two Ministers that by virtue of being appointed to the ministry they were presumed to constitute a part of the official block in the Sabha and, therefore, were automatically deprived of their right to vote on the floor of the Sabha. Not content with that, the President of the Sabha, by ruling awarded in the Sabha, declared that the two Ministers by virtue of their office were presumed to have lost their elected position in the Sabha. The Maharaja, most probably amused at the mockery the scheme was reduced to, hurried to amend the Constitution Act and reserve the Ministers the grace to retain their representative position in the Sabha and their right to vote.

The entire official block, which included the Prime Minister and the other Ministers, had few illusions about the dual government. Within the structure of the government, the two Ministers were vested with little initiative to influence policy formulation. In fact, the ultimate power with regard to policy decisions continued to remain with the Maharaia and his Council of Ministers. The Council functioned as the instrument to execute the decisions laid dowu by the Maharaja and the small area of discretions that apparently appeared to be vested with it was subject to the ultimate authority of Ruler. As a matter of fact, the Council of Ministers, constituting the political executive carried out the dictates of the Maharaja and it is here that Maharaja, as well as the members of the Praja Sabha failed to

realise that the extremes, they represented, could not be reconciled.

The dual government was fraught with many inherent contradictions and procedural defects. The two Ministers, appointed to the Council on the mandate of the Praja Sabha, were bound in their responsibility to both the Maharaja and the Sabha. The Ministers, apparently charged to carry out the mandate of the Sabha, were in the effect placed with in the ring-fence constituted of the official block inside the Sabha. In the Council, the two Ministers represented a distinctly different outlook which could by no means be reconciled to the policy lines the other Ministers followed.

Not only were the two ministers denied initiative in the formulation of the administrative policy, they were also deprived of the technical opratives necessary for their function. Beg addressed a number of representations to the Prime Minister strongly pleading for the allocation of a separate secretarial staff for his ministry. In a number of meetings with the Prime Minister, Beg brought it to his notice, that his work was hampered for want of the necessary service staff and the existing process of operating through the Home Secretariat and Revenue Secretariat was obstructive. The Prime Minister turned a deaf ear to the remonstrations Beg made. Beg made several representations to Pandit Ram Chandra Kak also when Kak was appointed the Prime Minister of the State. After protracted negotiations which spread over a number of a months,[11] Kak accepted Beg's proposals in principle and offered to bifurcate the Home Secretariat and put one of the wings under the Minister for Public Works and Municipalities. Kak did not implement the proposal. Tired and frustrated the Conference Minister wrote to Kak:

> Soon after my assumption of office anomalous position with respect to P.W.M. came to light. Where as every other Minister of the Government has a Secretariat of his own over which he exercises complete administrative control, such is not the case with the P.W.M. He has no secretariat

[11] Mirza Afzal Beg to Pandit Ram Chandra Kak, Dated 21st August, 1945.

attached to him or responsible to him. At present he works through the Home, Revenue and Development Secretariats, none of which is affiliated to him. He hoped that after his appointment by His Highness the consequential changes would be effected by the Government but as things turned out no action was taken. After a thorough discussion with your Hon'ble Predecessor-in-Office who realised the difficulties and recognised the need of a separate Secretariate in the case of P.W.M. the latter sent in a memorandum on 28-12-1944. Prompted by desire, which he was confident, that his other Hon'ble Colleagues shared with him, of making the experiment so graciously introduced by our benign Ruler of associating his subjects with the governance of the State successful, the P. W. M. requested that any possible difficulties in that direction should be forthwith removed. But unfortunately the proposal made no headway until Sir B.N. the former Prime Minister relinquished office.

After assumption of office by you the matter was brought to your notice in verbal discussion and ultimately a written request was made under my No. 215-P/45 dated 21st August 1945, in which the original proposal for creating a small Secretariat was repeated. Inspite of repeated requests made verbally to you, no tangible result has followed. On 13th December, 1945, during a personal discussion on the issue you expressed your readiness to make a sort of adjustment by bifurcating the Home Secretariat in two branches-each under H. H. M. and P. W. M. But even this halfway measure, though falling far short of my original request, has not fructified.[12]

The Prime Minister was evasive. In fact, Secretariat was a closely knit bureaucratic organisation committed to the regime. It could not place any operational opportunities at the disposal of the two Ministers. The Prime Minister expressed the inability of the Government to take any purposeful action. In vain and wasteful argument, he wrote to Beg:

[12] Mirza Afzal Beg to Pandit Ram Chandra Kak, Dated 15th January, 1946.

With regard to the question of Secretariat as you are aware, for the last several years, the Secretariats have been of a composite character and each Minister has to deal with several Secretaries and Secretariats.

So long as the, number of Ministers coincided with that of Secretaries, though an anomalous one, it could continue without much difficulty, but with the increase in the number of Ministers its inherent defects became immediately noticeable. When you mentioned the matter to me, I explained how undesirable it would be to create and retrench Secretariats as circumstances necessitated increase or decrease in the number of Ministers, I added that in British Indian Provinces and in certain Indian States Secretariats remained constant while the number of Ministers, varied as circumstances demanded. When the Secretariats were reorgnised in 1939 and the posts of Secretaries were made tenure appointments, the allocation of departments among the Secretariats no longer continued to be identical with the portfolios of the Ministers who controlled them. In the circumstances the logical course would have been to combine the Secretariats for purposes of administration though they might continue to function under the Ministers in respect of the performance of their appointed duties. I however, offered, as a purely temporary measure, to place under you the Public Works Secretariat with either the Secretary or the Assistant Secretary. You preferred the Secretary-for all purpose in the same manner as other Secretariats where under other Ministers. You accepted the suggestion but pressed that the establishment in other Secretariats dealing with the departments under you should also be transferred to this Secretariat. This, however, would have meant going back to the system which had been discarded in 1939 after detailed consideration and it was therefore, impracticable when the order was drafted to implement the suggestion made by me, the Chief Secretary informed me that he understood that the arrangement would not be acceptable to you. The only solution, therefore, was the logical one, namely that of placing all Secretariats for purposes of administration under one authority. A proposal was accordingly submitted to Council

and received the support of the other Ministers. Orders have since been passed and your position is exactly that of your colleagues with reference to the Secretariat. Moreover you have Personal Assistant which the other three Ministers have not.[13]

The most serious anamoly which came to surface shortly after the institution of the dual government and which ultimately wrecked it, was the problem of the position, the popular Ministers enjoyed in the Sabha. Beg claimed the right to freedom of speech on the floor of the Sabha and the right to vote against an official measure, whenever that was deemed necessary. A workable arrangement was evolved during the tenure of Sir Maharaja Singh and it was agreed that the two Ministers would retain the right to free expression in the Sabha and also their right to vote against an official resolution. In fact, things moved smoothly in the Sabha and no occasion arose when the two sides had to fall out and confront each other on the floor of the Sabha. In 1945, however, difficulties cropped up again when Pandit Ram Chandra Kak refused to follow the procedure laid down by his predecessors and informed Beg that he would not only expect the two Ministers to vote in favour of every official measure that came up before the Sabha, but he would also expect them to desist from expressing themselves against any official motion tabled in the Sabha. The Prime Minister insisted that the Council of Ministers he headed, should function as a cohesive and compact structure. The two Ministers, he conceded, could dissent from the official policies of the Government in the Council, but once decisions had been taken they were bound to submit to the line laid down by the majority in the Council and support it in the Sabha. The Prime Minister, obviously, had enough logical justification for the stand he took. Any departure from what he required the two Ministers to do in the Sabha, would inevitably lead to the break up of the Council in diametrically opposite factions, each fighting with the other inside the Council and on the floor of the Sabha, a situation

[13] Pandit Ram Chandra Kak to Mirza Afzal Beg, Dated 12th February, 1946.

which no Prime Minister would prefer to preside over. Not only would such an eventuality hamper the conduct of the government, particularly with regard to the administration of the subjects put in charge of the two Ministers but would seriously jeoparadise the function of the Council and undo its solidarity and secrecy.

The Prime Minister wrote to Mirza Afzal Beg:

> With regard to the question of voting and this applies also to speaking-it is not possible to allow an individual member of the Government to act in a manner which is at variance with the policy of the Government. No Government can satisfactorily be carried on this basis. The position that may arise in case such freedom of action is recognised has only to be stated to demonstrate how untenable it is. For example, if your suggestions were accepted, five members of the Government would on occasion be divided into three units each pulling in a different direction. This you will surely agree would be a Ludicrous and anomalous position which would be fatal to the success of the experiment initiated by His Highness. Every Minister can, of course (as both you and Wazir Gangaram have done repeatedly) advocate and influence policies within the Council.[14]

Inspite of the technical reasons the Prime Minister had to persuade the two Ministers to support the Council in the Sabha, he overlooked the fact that his policy would eventually force the two Ministers into helpless subordination in the Council as well as the Sabha. He knew well that the two Ministers, for the object minority they were in, could never alter or influence the policies adopted by the official block. The only course, they were left open, was therefore, to stand by the Prime Minister in whatever he did, a position which they would never be able to accept. Pandit Ram Chandra Kak refused to recognise that the two Ministers were not only

[14] Pandit Ram Chandra Kak to Mirza Afzal Beg, Dated, 14th March, 1946.

the accredited nominees of the Sabha but also the elected representatives of the people who had returned them to the Sabha. The National Conference, which constituted the largest elected group in the Sabha had its own commitments to fulfil. Its nominee in the Council could not abnegate from his rightful function and could not submit to any official decision which contravened the primary purposes the Conference sought to achieve. The Prime Minister ignored the poltical implications of the dual government, and in that respect destroyed the little substance the structure still had. Mirza Afzal Beg clarified the issues involved when he wrote to the Prime Minister:

> The intention underlying the Proclamation is the effective association of His Highness' subjects in the Government of the State. The direction in the Proclamation that official block in the Assembly was not to participate in the proceedings relating to selection of members to the panel, clearly indicated that officials should not influence the decision of the Assembly. This ensured that the representatives of the people-according to the Assembly-should largely determine the appointment of Ministers. Thus to the advice of Ministers so selected considerable weight attaches in matters of public importance and to my mind this cannot be lost sight of in the disposal of questions pertaining to the administration. An earnest attempt to accomodate their view point should be forthcoming and it cannot be brushed aside totally simply because majority take a different view on any issue before the Council. The position taken that 'If the decision of the majority in the Council goes against the member, he has to accept and endorse the policy of Government', I am afraid, does not strictly stand.
>
> In the appointment of Ministers of Council, as at present constituted, His Highness has adopted two different and distinct methods. Where in the case of Popular Ministers they are elected in the prescribed manner and are eligible for reappointment only if they remain members of the Praja Sabha, such is not the case with other Ministers. That is His Highness' Command. While implementing it, earnest effort should be made by us all to avoid possibilities

which will land the elected Ministers in embarrassments and positions of no-confidence by public. Whoever is appointed as a Popular Minister under the present system must according to the spirit of the Proclamation retain public confidence which can be only retained if the popular view point as expressed by such Ministers is given due weight to. On the contrary; if the decisions of the Council are to be taken by actual voting, the Popular Ministers surely will find themselves in minority in the Council, even if they always vote together. In such a contingency these Ministers have to bear the brunt of public criticism, which the other Ministers can afford to ignore. Should such an issue be an important one, may I ask how these Ministers can continue to enjoy public confidence, especially when you except them not to express even their individual opinion by means of vote on the floor of the Praja Sabha. There have been occasions on which I differed from the view taken by my other colleagues in Council and if I am not even allowed by the Government to vote in favour of that view I feel that it is not only suppression of opinion but will also lead to consequences directly in conflict with the spirit of the Royal Proclamation.[15]

It is difficult to locate the plausible reasons which prompted the Conference leadership to operate dyarchy and accept office under the proclamation. The Conference took some time to realise that dyarchy was organised puppetry and the two representatives of the Praja Sabha were posted in the ministerial column of the Maharaja to serve him, rather than carry out the mandate of the Sabha or implement the policy plans the Conference idealised. Dyarchy did not only operate to contain the Conference Representative in the Council, but scandalised his position in the Sabha.

The Conference representative achieved little while he remained in office, except, of course the handsome honorarium that he collected from the State treasury and pocketed with much impunity. The Government was far from prepared to allow its policy formulation to be influenced by the Ministers

[15] Mirza Afzal Beg to Pandit Ram Chandra Kak, February, 23, 1946.

nominated by the Sabha or permit any change in the ultimate direction its decision making took and the operatives its discretion flowed into.

An oblique warning, cleverly conveyed to the Conference Minister by Pandit Ram Chandra Kak clinched the issue. The Prime Minister informed Mirza Afzal Beg that the Conference representative had been appointed to his office on the support he received from the entire Sabha and therefore he was answerable to all the different groups which constituted the non-official block and was supposed to bear the burden of the entire Sabha for the Maharaja. Perhaps, half-mindful of what responsibility in the legislature entailed the Prime Minister wrote to Mirza Afzal Beg:

> I trust that I have made the whole position clear to you. I should like to add that you were selected in consideration of support which members of the Sabha, majority of them widely differing from the policies favoured by your group, gave you. It was and is His Highness's hope and aim and this was generally recognised by the members of Sabha and by the members outside your group who supported you, that the Ministers selected from amongst the members of the Praja-Sabha act in the common interest of all ; and by influencing the decision of the Government on the one hand and by explaining to the people the aims and objects of the policies of the Government and the difficulties confronting it on the other, promote an "entente cordiale" which would benefit the State as a whole, I sincerely trust that this hope will still be fulfilled.[16]

The communication conveyed more than what Mirza Afzal Beg could bear. Fantastic and vituperous in content, the communication of the Prime Minister, in effect, reduced the two Ministers to the position of mercenary agents not only of the political factions which they did not represent and lead but also of the official block in the Sabha and the Council of Ministers outside it. Three days after Mirza Afzal Beg received

[16] Pandit Ram Chandra Kak to Mirza Afzal Beg, dated 14th March, 1946.

the Prime Minister minute, he offered to resign and requested to be relieved of his office immediately.[17] On 19th of March, his resignation was accepted.[18]

As the Conference representative withdrew the Government struck back. Shortly after, Beg was relieved of his office, the Government secretly offered the ministerial office to Mian Ahmad Yar, the leader of the National Conference party in the Sabha. Ahmad Yar was a veteran nationalist, who had led the Muslim Conference group in the Sabha before it was converted into National Conference and after that, the National Conference legislative party. However, when dyarchy was instituted he was by-passed by the Conference leaders and Mirza Afzal Beg was nominated for the office instead. Obviously Ahmad Yar did not forgive the Conference leaders for what they had done to him. He accepted the offer made by the Government and joined the Ministerial Council of the Maharaja. The appointment of Ahmad Yar was a debacle for the Conference. Desperate and angry the Conference leaders charged Pandit Ram Chandra Kak of conspiracy to push out Mirza Afzal Beg from the Government and break up the Conference.[19]

The option, the State Government utilised to appoint Mian Ahmad Yar to the Ministerial Council ended the 'entente cordiale' between the Government and the National Conference. The Conference charged the Government of breach of faith. The allegation was not false. The proclamation which envisaged dyarchy was apparently an endeavour to secure the participation of elected representatives in the administration of the State. It did not envisage any political responsibility. It gave no initiative to the Ministers appointed from among the members of the Praja Sabha nor did it vest with them any area of administrative discretion. There was a wide difference between what the Ministers demanded to perform and what the Government permitted them to undertake and it was only inevitable that the conflict ingrained in the

[17] Mirza Afzal Beg to Ram Chandra Kak, dated, 17th March, 1946.

[18] Pandit Ram Chandra Kak to Mirza Afzal Beg, dated, 19th March, 1946.

[19] Khudmat, dated, 19th April, 20th April, 21th April, 1938.

structure come to surface. But the strategy, the Maharaja and his Government adopted to perpetuate the dual government, alienated whatever little favour the Conference cadres still harboured for the Dynasty and the regime. If the Maharaja had not sought to implement a promise which he knew was hollow, perhaps many of the events which led to the "Quit Kashmir" movement and its fateful consequences would have been avoided.

The Government headed by Pandit Ram Chandra Kak, convinced that it had struck a severe blow to the prestige of the Conference and possibly sown dissension among its ranks, overlooked the fact that a potential political movement, represented in the institutions established by the Maharaja was a more secure guarantee to ensure a constructive political development in the State. By the time dyarchy reached its end, the national movement in India had already entered the most decisive phase of its development. The confrontation, which the Government wilfully pushed itself in against the National Conference, actually eroded the ground from under the Dogras. The appointment of Ahmad Yar was political blackmail, duplicity and crude trickery and drove the Government, headed by Pandit Ram Chandra Kak, straight and direct to its nemesis.

Cabinet Mission

While the tragic drama, which led to the resignation of Mirza Afzal Beg was being enacted in the State, events of far-reaching importance were taking shape in India. On 15th of March 1946, the British Prime Minister, Clement Attlee, made an announcement in the House of Commons that the British Government had decided to send a high power Cabinet Mission to India to find a solution of the Indian problem. The Secretary of the State for India, Lord Pathic Lawrence, the President of the Board of Trade, Sir Stafford Cripps and the First Lord of Admirality, A.V. Alexander were appointed on the Mission. The Mission arrived in India on 23th of March, 1946, a week after Mirza Afzal Beg had been driven out of the Government. The members of the Mission conducted extensive discussions with the Indian leaders,

officials of the Indian Government and the representatives of the States. The Mission, finally presented a scheme to the Indian leaders, which it believed, could form a basis for the future constitutional set up in India. The scheme envisaged that:

1. One Union of India would be constituted of both the British Indian Provinces and the Indian States. The Union Government would be vested with the powers to deal with foreign affairs, defence and communications.
2. Residuary powers would be retained by the Provinces;
3. The Indian States would have the option to accede to the union and those States which acceeded, would retain all the powers other than those delegated to the Union.
4. The Provinces would be free from groups and each group would be entitled to determine the provincial subjects to be taken for consideration.
5. The Constitution of the Union and the groups would include provisions, according to which any province could, by a majority vote of its Legislative Assembly, call for reconsideration of the terms of the Constitution after an initial period of ten years and at ten yearly intervals after that.

The Cabinet Mission laid down in elaborate detail, the procedure according to which the Constitution would be framed. The Mission proposed the institution of a Contsituent Assembly which would represent the Provinces as well as the States. In view of the absence of adult sufferage, widespread differences in the numerical strength of the Legislative Assemblies and the absured proportions of weightage given to the various communities in these Assemblies, the determination of the composition of the Constituent Assembly proved to be a difficult task. After examining the various alternatives, the Mission fixed the total strength of the Constituent Assembly at 384 members. Each Province was to be allotted the number of the seats proportional to its population, roughly in a ratio of one to a million. The Provincial allocation was to be

distributed between the three main communities, the Hindus, the Sikhs and the Muslims, in proportion to their population. The Chief Commissioners Provinces were to be given four representatives in total. The Indian States were allotted ninety three seats in the Assembly. The exact method of their selection and deputation was to be settled by consultation.

While the Cabinet Mission refused to recognise any contention for the division of India and the separation of the Muslim majority provinces, it did not follow a similar line of approach with regard to the States. The Mission clearly indicated that the British Government would neither retain the powers of Paramountcy nor transfer Paramountcy to the proposed Union. The Cabinet Mission underlined the lapse of Paramountcy and the right of the Princes to accede to the Union or assume technical independence upon the withdrawal of Paramountcy. The Cabinet Mission plan, with whatever merits it had, left the door open for the provinces as well as the States to stumble out of the Unoin of India.

> When a new fully self-governing or independent Government or Governments come into being in British India, His Majesty's Government's influence with these Governments will not be such as to enable them to carry out the obligations of Paramountcy. Moreover, they cannot contemplate that the British troops will be retained in India for this purpose. Thus in logical sequence and in view of the desire expressed to them on behalf of the Indian States. His Majesty's Government will cease to exercise the rights of Paramountcy. This means that the right of the States which flow from their relationship with the Crown will no longer exist and that all the rights surrendered by the States to the Paramount Power will return to the States.. Political arrangements between the States on one side and the British Crown and British India on the other will thus be brought to an end. The void will have to be filled either by the States entering into federal relationship with the successor Government or Governments in British India or failing that, entering into the particular political arrangements with it or them.

The Princes were, infact, invited by the Mission to participate in the negotiations conducted to divise the machinery for constitution making. The Mission discussed various issues with the Chancellor of the Princes, the Nawab of Bhopal and the other rulers among whom were the rulers of Patiala, Bikaneer, Nawanagar and Bilaspur and the representatives of the rulers of Travancore, Jaipur and Hydrabad. During their negotiations with the Mission the Princes insisted on the arrangments which would secure them their position and preseve the power and prestige they enjoyed in the British colonial structure. The Princes strongly opposed the British plan to withdraw the protection the Princes enjoyed under the Paramountcy, and vigorously advocated its preservation. They expressed their stubborn reluctance to accept any changes in the relations they had with the Indian Government or introduce constitutional reforms in their States which would impose any limitations on their prerogatives.[20]

The Cabinet Mission Plan, envisaged the institution of an Interim Government which would be constitued with the support of all the major parties in India. Lord Wavell who was entrusted with the task of negotiating a settlement on the Interim Government, held long and protracted discussions with the leaders of the Muslim League and the Congress. The League was dead set to defeat the efforts to carry out the proposals made by the Cabinet Mission particularly those with regard to the formation of the Interim Government.

On 29th July, the Muslim League delivered the first offensive when by a resolution it withdrew the support it had extended to the Cabinet Mission Plan and rejected the possibility of its association with any Interim Government which would be instituted at the centre. By the same resolution the League ignited the power leg it had preserved for years to be used against the Congress at the appropriate time. The resolution called upon the Muslims in India to launch "Direct Action" for the achievement of the Pakistan on 16th of August 1946. That was the beginning of the end.

Inspite of the inability of the League to come to an agreement with regard to the formation of Interim Government, the

[20] R.L. Hand, Freedom Struggle in Princely States, p.p. 288-95.

Interim Government was formed in September. The League did not join it. Wavell, however called the League leaders to join. Finally, the League accepted to join the Government but refused to change its position with regard to the Constituent Assembly. The Congress leaders asked the Viceroy to secure specific assurance from the League that it would join the Government as well as the Constituent Assembly. Wavell assured the Congress leaders that 'League would come into the Government and the Constituent Assembly with the intention of cooperating.' League joined the Government on October 26. However, when the Viceroy invited the members of the Constituent Assembly elected by the Provincial Legislative Assemblies to the first session of the Constituent Assembly, the League refused to join. The Interim Government met the fate it deserved.

Quit Kashmir

After the crisis in Dyarchy and the resignation of Mirza Afzal Beg from the Ministry, the State Government gradually stiffened its attitude towards the National Conference. The shift in the policies of the Government, unmistakably reflected the impact, the Cabinet Mission proposals had on the Princes. Sheikh Mohamad Abdullah, the President of the National Conference sent a long telegram to the Mission, stating the principles, which the Conference desired the Mission to adopt in regard to Kashmir. The telegram read:

> As President, All Jammu and Kashmir National Conference representing all communities and classes of people inhabiting Jammu and Kashmir State I welcome your visit to our State and hope that it will usher in a new era of freedom both political and economic for four million State people. As Mission is at moment reviewing relationship of Princes with the Paramount Power with reference to treaty rights we wish to submit that for us in Kashmir re-examination of this relationship is vital matter because hundred years ago in 1846 land and people of Kashmir were sold away to servitude of Dogra House by British for seventy five lacs of Sikh rupees equivalent to fifty lakhs of British Indian rupees.

Then Government of Kashmir resisted transfer, but was finally reduced to subjection with aid of British. Thus sale deed of 1846 misnamed treaty of Amritsar sealed fate of Kashmir masses. We declare to world that the sale deed confers no privileges equivalent to those claimed by States governed by treaty rights. As such case of Kashmir stands on unique footing and people of Kashmir press on Mission their unchallengeable claims to freedom on withdrawal of British power from India. We wish to declare that no sale deed however sacrosanct can condemn more than four million men and women to servitude of an autocrat when will to live under this rule is no longer there. People of Kashmir are determined to mould their own destiny and we appeal to Mission to recognise justice and strength of our cause.

Meanwhile tension continued to mount in the State. Stormy protests and demonstrations were organised by the National Conference against the appointment of Ahmad Yar. Appeals and entreaties were made to him to resign from his office and when he did not, he was asked to resign from the Praja Sabha for having lost the confidence of his electors. Finally Ahmad Yar was expelled from the National Conference.[21]

Sheikh Mohammad Abdullah, who had gone to Delhi to attend the meeting of the Standing Committee of the States and People Conference and also to discuss with the Congress leaders, the issues arising out of the Cabinet Mission, returned to Srinagar on 3rd May, 1946. He found Srinagar in a State of crisis. Three days after, Sheikh Mohammad Abdullah lashed out at the Government of the State and accused it of having conspired to scuttle dyarchy and undermine the movement for self-rule in the State. He called upon the people to prepare for the last phase of their struggle against the Dogras.[22] In another speech, which Sheikh Mohamad Abdullah delivered in Srinagar on 10th of May, he delivered a sharper attack on the Dogras.

[21] Khidmat, dated, 21st April, 1946.

[22] Speech delivered in vernácular, Khidmat May 8, 1946.

We have struggled for self-government for the last sixteen years but our protests have been ignored. We have realised the truth now. We are slaves and we have no rights. We have been purchased by the Dogras for a very small sum. Inspite of our repeated request that the administration of the country be entrusted to the people, the Government of the State always remained unmoved. The Maharaja issued a proclamation that he would appoint two representatives of the people on his Cabinet. We accepted to work out the sprit of the proclamation and deputed our representive to the Cabinet. Pandit Ram Chandra Kak, however, opened our eyes and made us to see the fraud that had been perpeterated on us.

The Treaty of Amritsar has no legal validity. The Englishmen are preparing to leave India with their bag and buggage. The Treaty has lost its basis.[23]

The speech marked the beginning of the famous "Quit Kashmir" movement. Sardar Budh Singh was recalled to Srinagar from Batote where he was leading the agitation in the Jagir of Chenani, a jurisdictional fief held in perpetual and personal possession by the Raja of Chenani. On 20th May, Sheikh Mohammad Abdullah was arrested while he was on way to Delhi. Within a day, the entire leadership of the Conference was interned. Thereafter, a wild manhunt for the other ranks of the Conference was put into Operation. Troops were deployed all over the major towns of the State to maintain peace and order. At many places, they had to open fire to disperse angry demonstrators.

The "Quit Kashmir" agitation and the consequent confrontation between the State Government and the National Conference cadres had many political implications. At the critical time when the future of India was on the anvil, the political upheaval in the State and the bid of the State Government to liquidate the National Conference, the only stabilising factor in the State politics, was bound to effect, the delicate balance of forces, the Congress, made efforts to maintain in the States.[24]

[23] Translated from vernacular, Khidmat, May 11, 1946.

[24] Statesman, 23rd May, 1946.

In fact, the Muslim League quickly seized the opportunity. It attacked the National Conference and secretly assured the State Government of its support against the Conference.[25] On June 2, the States People's Conference, Regional Organisations, Regional Councils, Praja Mandals, Lok Parishads and the State Congress branches all over the country, organised protest meetings in support of the people of Kashmir.[26] The President of the States People's Conference, Pandit Nehru, gave a call to collect funds and raise volunteers for Kashmir. Later the General Council of the State People's Conference passed a resolution which expressed solidarity with the people of Kashmir in their struggle for freedom and authorised the President of the Conference to take such steps as he would consider necessary to deal with the situation in Kashmir.[27] On June 13, Nehru issued a statement in which he expressed his resolve to bring about a peaceful settlement of the trouble in Kashmir. The next day, Nehru informed the Maharaja telegraphically, that he had decided to come to Srinagar to help in ending the complicated situation in the State.[28] The Maharaja spurned the offer, Nehru made, and in reply told him that his visit would further complicate the issues and therefore, it would not be advisable for him to come to Srinagar.[29] Nehru sent another telegraphic message to the Maharaja and asked him to reconsider the decision he had taken.[30] Hari Singh refused to yield.[31] On June 16, Nehru wrote a long letter to the Maharaja in which he expressed his anxiety at the happenings in the State. He pleaded for a peaceful settlement of the problems facing the State. He wrote:

> I hope to reach Srinagar together with Mr. Asaf Ali, Diwan Chaman Lal and Mr. Baldev Sahai, Ex-Advocate General of Bihar on the 19th evening by car from Rawal-

[25] Statesman 12th June, 1946.
[26] J.L. Nehru, Statement, May 27, 1946.
[27] Resolution of the All India States People' s Conference.
[28] Nehru to Hari Singh, 14th June, 1946.
[29] Hari Singh to Nehru dated, 17th June, 1946.
[30] Nehru to Hari Singh, dated, 17th June, 1946.
[31] Hari Singh to Nehru, Telegram, dated, 17th June, 1946.

pindi. The immediate object of our going there is to arrange for Sheikh Mohamad Abdullah's defence in the trial that has been fixed for June 21. I am much more concerned, however, as I have no doubt, you are also, with the general situation in Kashmir of which this trial is only a part. I should very much like to be of some help in the solution of the problems that have arisen there. My main object in going is to endeavour to do so. I want, as you must also desire, peace and development in Kashmir State. I feel, however, that it will not be possible, to return to normality and peace unless these trials are withdrawn and Sheikh Abdullah and his colleagues are released. Naturally, the present agitation, that is still continuing in some form or other in Kashmir, should also be stopped at the same time. This action will result in a proper and peaceful consideration of various problems which those interested in Kashmir, have to face. I have therefore, requested you in my telegram- and I would like to repeat the request here that Sheikh Abdullah and others be released. As you are no doubt aware: Sheikh Abdullah was on his way to consult me here in Delhi when he was arrested. As soon as he is released, we can confer together and endeavour to devise means which lead to a proper settlement.

Referring to the importance of a peaceful settlement of the problems facing the State, Nehru wrote:

The problem of Kashmir is important enough by itself and some of us are intensely interested in it. At the present moment, however, it has additional importance in the whole context of Indian States. The Constituent Assembly is likely to come into being soon and each State and, more especially, the major States, will have to consider representation in this Assembly. You are, I presume, aware of the popular demand put forward both by the Indian National Congress and the All India States people's Conference that representation in the Constituent Assembly should be by means of representatives elected by the people. All these and similar problems have to be faced very soon. It is obvious that the difficulty inherent in these problems will be

greatly increased if the situation in Kashmir is abnormal and the State is in conflict with the popular organisation there.[32]

The letter was delivered to the Maharaja on the morning of 19th May. The same day Nehru reached Kohalla, a border outpost on the Rawalpindi—Srinagar road. Before, however, Nehru could cross into the State borders, the District Magistrate of Srinagar, handed over to him, an order, prohibiting him to enter the State. Barricades were thrown up accross the road and a platoon of Dogra troops, with mounted byonets lined behind. Bewildered and outraged, Nehru broke through the barricades and the cordon of the troops.[33] Late in the night, he was put under arrest at Domel, a wayside station on the road to Srinagar, thirty miles inside the border. The news of Nehru's arrest spread like wild fire. Wavell put himself in touch with the Maharaja. The next day, Maulana Abdul Kalam Azad instructed Nehru to return to Delhi. He sent a telegram to the Maharaja urging him to postpone the trial of Abdullah so that Pandit Nehru could return to Delhi where his presence was urgently needed.[34] Hari Singh sent him the following reply:[35]

There is nothing to prevent Nehru from returning whenever he wishes to return. There was never any intention of detaining him here, if he wanted to return. As far as the issue of orders for postponement of case, as suggested by you, is concerned, such course is not possible, as the case is in the hands of independent judiciary. I assure you, my Government will not oppose grant by any court of a reasonable postponement requested by defence. Your telegram to Nehru had been wirelessed to him. Original forwarded by special messenger. All facilities will be provided to enable him to return to Rawalpindi the moment he decides to do so. In fact one of my cars is at his disposal.

[32] Nehru to Hari Singh, Dated, 16th June, 1946.
[33] The Tribune, 21st May, 1946.
[34] Maulana Abdul Kalam Azad to Hari Singh, Dated, 21st June, 1946.
[35] Hari Singh to Maulana Abdul Kalam Azad, Dated, 21st June, 1946.

Subsequently Nehru returned to Delhi.

Inside the State, the Conference leaders were tried for sedition and treason and sentenced to various rerms of imprisonment. Slowly the movement was smothered down. For conspiracy to overthrow the Government Sheikh Mohamad Abdullah was sentenced to imprisonmemt for nine years. In his defence in the court Sheikh Mohamad Abdullah said:

> Oppressed by the extreme poverty and lack of freedom and opportunity of the People of Jammu and Kashmir State, I and my colleagues of the Jammu and Kashmir National Conference, many of whom are behind prison bars or in exile today, have humbly sought to serve them during the past sixteen years. We have endeavoured to give faithful expression to the growing consciousness among the people of their imprescriptable rights, aspirations and desire for freedom. This has attracted the penal and preventive provisions of law, where law is not based on the will of the people, it can lend itself of the suppression of their aspirations. Such law has no moral validity even though it may be enforced for a while. There is a law higher than that, the law that represents the people's will and secures their well-being, and there is the tribunal of human conscience, which judges the rulers and the ruled alike by standards which do not change by the arbitrary will of the most powerful. To that law I gladly submit and that tribunal I shall face with confidence and without fear, leaving it to history and posterity to pronounce their verdict on the claims I and my colleagues have made not merely on behalf of the four million people of Jammu and Kashmir but also of the ninety-three million people of all the States of India. That claim has not been confined to the people of a particular race, or religion or colour. It applies to all, for I hold that humanity as a whole is indivisible by such barriers and human rights must always prevail. The fundamental rights of all men and women to live and act as free beings, to make laws and fashion their political, social and economic fabric, so that they may advance the cause of human freedom and progress, are inherent and

cannot be denied though they may be suppressed for a while. I hold that sovereignity resides in the people, all relationships political social and economic, derive authority from the collective will of the people.

In August, the State Government decided to hold elections to the Praja Sabha. The National Conference, which was still reeling under the severe blow, it had received after the "Quit Kashmir" agitation joined the contest.[36] A Central Parliamentary Board was constituted by the Conference to conduct its election campaign. On its part, the Government continued to build pressure on the Conference and undermine its position. Most of the Conference cadres were arrested and imprisoned. In the villages and the towns, the local Election Committees of the Conference, were broken up and their members jailed.[37] Apparently, a logical sequence of what the Government had done to crush the 'Quit Kashmir', movement, the policy of the Government to undo the National Conference, was abjectly shortsighted. National Conference was the only stabilising force, in the otherwise a very sensitive and uneven political balance, the Dogras were poised upon, a fact, which the Dogras refused to recognise. The Muslim Conference was committed to the ideals espoused by the Muslim League and supported the partition of India and the separation of the Muslims majority areas into an independent State. The Dogras failed to realise the strategic and political dangers, the State would have to face, in case the League demand for partition was accepted and the Punjab became Pakistan. The conservative sections among the minorities, the petty interests in land and the small political factions, such as the Kisan Conference and the Socialist Party, which survived on State subsidies could hardly play any effective role in the State politics.

The Muslim Conference had its own problems. In October, the Muslim Conference decided to convene its annual session in Srinagar. The Conference had silently watched the great drama in which the Nationalists had come to a head-on colli-

[36] *Ibid.*
[37] *Ibid.*

sion with the Government. Within itself, however, the Muslim Conference had broken into factions of diverse loyalities. The Conference had adopted the 'Direct Action' resolution of the Muslim League and appointed an Action Committee, under the presidentship of Moulvi Yourself Shah to lead the 'Direct Action' campaign. Behind the scene, however, a sizeable section of the Conference leadership had disfavoured the adoption of the resolution. The situation came to a head when the Government refused to allow the Muslim Conference leaders to hold the annual session of the Conference in Srinagar. The Conference leaders launched a feeble agitation which pereted out in day.[38]

Chowdhry Gulam Abbas, alongwith a few more Conference cadres was taken into custody. Chowdhry Hamid Ullah was appointed the Acting President of the Conference. Hamidullah lost no time to accuse Moulvi Yousuf Shah for the debacle the agitation had met. Hamidullah, however, weilded little influence over the Conference cadres and, therefore, could not bring them round to rally again. A long controversy ensued. With that the Conference began to disintegrate.[39]

As the elections to the Praja Sabha drew near, the Government moved surreptitiously to undermine the National Conference. On November 17, the Central Election Board of the Conference was broken up and its members taken into custody. On November 20, Bakhshi Ghulam Mohamad, the Acting President of the Conference issued a statement in Lahore, which called upon the Government to put an end to its repressive policies and allow the conditions in the State to normalise in view of the forthcoming elections to the Praja Sabha. Bakhshi Gulam Mohamad underlined three conditions which were necessary for the settlement of the political crisis in the State. They were:

(i) immediate release of all political detenues and prisoners;
(ii) the institution of a Constituent Assembly in the State to frame a new constitution; and
(iii) the recognition of safeguards for the cultural, religious

[38] Eastern Times, 5th October, 1946; Statesman 27th October, 1946.
[39] Hindustan Times, 3rd November, 1946.

and linguistic interests of the minorities in the State.[40]

The State Government was in no mood to stabilise its relations with the National Conference. It intensified its activities against the Conference. In the last week of November, the Government issued a notification which fixed January 4, the date on which the elections to the Sabha would be held. The nomination papers were scrutinised on 19th December. Most of the nomination papers filed by the National Conference were rejected on one pretext or the other. Eight nomination papers had been filed by the members of the National Conference against Mian Ahmad Yar. All the eight were declared invalid and Ahmad Yar was returned unopposed to the Sabha.[41] The same day Bakhshi Gulam Mohamad denounced the action of the Government and announced the decision of the Conference to boycott the elections.

A day after, the Standing Committee of the States People's Conference met in Delhi under the presidentship of Pattabi Sitaramaya. Pandit Nehru also participated in the deliberations of the Committee. The Committee adopted a resolution to endorse the decision of the National Conference to boycott the elections to the Praja Sabha.

[40] Khidmat. November, 20, 1947.

[41] *Ibid.*, 23-24 December, 1947. see also *Kashmir Demands Freedom and Plebscile* Published by Sham Lal Konl, office of the Kashmir Publicity Committee, G.p. 11-13.

Chapter 8

Independence And After

Interim Government

In 1947, the British decided to quit India. Along with the other Princely States, Jammu and Kashmir was also released from the operation of the British Paramountcy. The Princes were hardly in a position to retain the technical independence, they achieved. Since, the British were neither prepared to recognise the States as Dominions nor carry out any obligations the Paramountcy entailed, it was clear that the Princes were left with the sole option to accede to one of the two Dominions. Maharaja Hari Singh followed a policy of biding time, and did not accede to either of the Dominions till power was transferred to the Indian hands. It is difficult to locate the political factors which prompted the Maharaja to defer decision on the issue of accession and allow the crucial days to pass by. Much is not known about the course of action, the Maharaja had decided to take, but the circumstantial evidence proves that independence was uppermost in his mind. Hari Singh suffered from an excessive sence of credulity and could not convince himself that

the British would abandon the Princes even if they meant to leave India. To that extent the British officers of the Political Department spared no effort to assure the Maharaja. The Indian leaders exhorted the Maharaja to exceed to the Dominion of India. In June Lord Mountbatten arrived in Srinagar on a visit to the State. He Had long discussions with the Maharaja on the issue of accession which spared over for four days. The Maharaja, whose mind was almost made up, seems to have conveyed to the Viceroy his desire to assume independence after the British had left. Mountbatten frankly told the Maharaja that the British Government would not recognise the State as a Dominion and therefore, independence was not a feasible proposition for him to adopt. The Maharaja was assured by the Governor General that so long as he made up his mind to accede to one of the two Dominions before 15th, Cugust no trouble would arise. The Viceroy told the Maharaja that if he acceeded to Pakistan the Government of India would accept his decision. Mountbatten knew that the assurance he gave was only formal for it is difficult to believe that he himself or any of the Indian leaders did not know that the accession to Pakistan would be the last act the Maharaja would perform The Maharaja was however, evasive and avoided to commit himself to any of the altetnatives underlined by the Governor-General. Mountbatten sought another meeting with the Maharaja and his Primc Minister on the morning of the day his visit ended.[1] The meeting did not come off. Latter mountbatten invited the Maharaja to come Delhi and finalise a settlement there. Hari Singh did not go.

Those days Pandit Ram Chandera Kak, the Prime Minister fo the State' attehded the meetings of the Negotiating Committee and Sardar Patel took the opportunity to persuade him to advise the Maharaja to join the Indian Dominion. Sardar Patel wrote to the Maharaja as well and expressed his disappointment at the inability of the Maharaja to thrash out the issues with Lord Mountbatten. Sardar Patel almost implored the Maharaja to come down to Delhi for talks with the Indian

[1] V.P. Menon, *The Integration of the Indian States.*

leaders.[2] The Maharaja was not moved.

On 15th August, 1947, the Dominions of India and Pakistan came into being. Maharaja Hari Singh offered to execute standstill agreements with the two Dominions. The Government of India refused to accept the standstill agreement and advised the Maharaja to send his represantatives to Delhi, to discuss the implications the agreement involved. The Government of Pakistan promptly accepted the offer. A few days after the agreement was signed, Pakistan chonged its mood and launched a calculated campaign to pressurise the Maharaja and isolate him. An embargo was imposed on the transit of all goods moving into the State. The only two lines of communication which linked the State with the outside world ran into Pakistan; the one connected Srinagar with Rawalpindi and the other connected Jammu with Sialkot. Both the routes were sealed. The blockade and the consequent deterioration in the supply of essential provisions scuttled the small and slender of economy of the State. In the begning of September, Pakistan bega to nibble at the boarders of the State. The Maharaja realised quickly the danger that faced him. Pandit Ram Chandra Kak was dismissed and replaced by Meherchand Mahajan a Judge of the Punjab High Court. On 29th September, Sheikh Mohammad Abdullah was released from imprisonment.

On 22nd October, Pakistan mounted a majour military offensive against the State. Large bands of Pakistani irregulars, closely followed by regular troops, entered the State at a number of points all along the boarder with Pakistan. The invading armies made a frenzied bid to reach Srinagar and Jammu, the two capital towns of the State. The few Dogra battalions posted at the frontiers offered heroic resistance. The attack was, however, sudden and intense and the defences were easily over-come. On 24th October, the Maharaja appealed to the Government of India for help and offered the accession of the State to the Indian Dominion.[4] Three days

[2] Sardar Patel to Maharaja Hari Singh, *Sardar Partel's Correspondence*, p. 33.

[3] Meher Chand Mahajan, *Looking Back*, p. 144.

[4] V. P. Menon, *Integration of the Indian States*, p. 399.

after, the accession was accepted and the Indian troops were air-lifted to Srinagar. With a few days the invaders were pushed back.[5]

Immediately after the accession of the State to the Dominion of India, an Emergency Administration, headed by Sheikh Mohamad Abdullah was appointed by the Maharaja.[6] The Senior leaders of the National Conference were entrusted with the various departments in the Emergency Administration. The Maharaja desired that the Emergency Administration. operated in subordination to his ministrial establishment, which though incapable of any purposeful action, was still intact. The powers, the Emergency Administration was supposed to exercise, were not defined. As a metter of fact even the territorial jurisdiction of the Emergency Administration was not clearly delimited and for some time Prime Minister of the State carried the Impression that the Emergency Administration han been instituted to operate in Kashmir Province only. He received a jolt when the head of the Emergency Administration despatched an Emergency Officer to take over the administration in Jammu.

It is difficult to explain the reasons for which the Emergency Administration was instituted and the tasks it was expected to undertakc. It was a shoddy structure hardly equipped with the power and prestige to face the crisis the State was in. The situation, as it had developed after the invasion clearly indicated that the powers of the Government in the State be transferred to the National Conference. Sheikh Mohamad Abdullah had suggested that the Conference leaders be entrusted with the Government of the State and the existing Ministerial Council be disbanded and in case it was allowed to remain, be diverted of its powers. The Maharaja, however, proved reluctant to part with any substantial measure of authority. However the clash of operation, the dual government involved, did not take long to come to surface.[7]

In November, the Government of India advised the Maha-

[5] Sisir Gupta, *Kashmir-A study of India-Pakistan Relation*, p. 187-89.

[6] Emergency Administration order No. 176-H of 1947 dated 30th October, 1947.

[7] M. K. Teng and Santosh Koul, *Kashmir Special Status*, p. 36.

raja to appoint an interim government under the leadership of Sheikh Mohamad Abdullah till a model of democratic administrative institutions were evolved. The Maharaja was offered the option to retain Mehar Chand Mahajan as his Dewan. The Maharaja was assured that his Dewan could continue to remain a member of the Council of Ministers and would preside over its meetings.[8] The proposals made by the Government of India did not find favour with the Conference leadership which was opposed to the division of the powers between the Ministry and the Dewan. The elimination of the Dewan, however, brought to surface the necessity to demarcate clearly the authority the Council would exercise and the powers the Maharaja would retain. A more significant problem was the location of the facus of ministerial responsibility in the absence of a representative legislature and the obvious difficulty to determine the positions of precedence.

Gopalaswami Ayangar, who was now Minister without Portfolio in the Government of India, despatched a fresh scheme to the Maharaja and the leaders in the Emergency Administration. The scheme envisaged.

(i) An Interim Government, constituted of a Council of Ministers, be set up under the Constitution Act of 1939;
(ii) Sheikh Mohamad Abdullah be appointed the Prime Minister of the State and the other Ministers of the Council be appointed on his advice;
(iii) the Maharaja be permitted to retain the power to place restrictions on the function of the Council of Ministers by special directions in respect of certain matters of administration; and
iv) the Interim Government be made responsible to the Maharaja.[9]

The proposals made by Ayangar underlined a more compact

[8] Pandit Nehru to Maharaja Hari Singh, Sardar *Patel's Correspondence* p. 804.

[9] Gapalaswami Ayanagar to Maharaja Hari Singh, dated December, 9, 1947, *Sardar Patel's Correspondence* Vol I. p. 108.

and coordinated administrative structure. The interposition of the Dewan between the Cuoncil of Ministers and the Maharaja and the inevitable division of the Government into contesting fsactions, was bound to lead to concussion and clash of functions. Dyarchy carried within itself the seeds of its own destruction. The Scheme was, however, rejected by the Maharaja who refused to accept the removal of his Dewan and demanded the demarcation of a reserved sphere of powerr for himself. He also proposed the revival of the Praja Sabha and offered to convert it into a Constituent Assembly after fresh elections were held.[10]

The proposals made by the Maharaja were neither appreciated by the Indian leaders nor by the leader of the National Conference, The powers, the Maharaja desired to reserve for him, were, except for a few subjects, of considerable constitutional and political significance and any government deprived to exercise them, was sure to find itself considerably fettered in its operation. The Maharaja had a rightful claim to his person and prerogatives, his family, succession, privy purse and the powers to summon and prorogue the legislature but the other powers of the government decidedly belonged to the sphere, which in a representative form of government, deserved to be determined by the popele.[11]

Ayangar made a few minor modifications to his scheme and agreed to consider the reservatlon of certain powers for the exclusive control of the Ruler. The wrangle was finally resolved. The Interim Govetnment was instituted by a Proclamation made by the Maharaja on 5th March, 1948.[12] A Council of Ministers with Sheikh Mohamad Abdullah as the Prime Minister was constituted to conduct the administration of the State. The Council was to function on the principle of joint responsibility. The Maharaja promised in his proclamation that on the restoration of peace and normalcy in the State, the Council of Ministers would make arrangements for the convocation of a National Assembly, which would be

[10] Maharaja Hari Singh to Gopalasswami Ayanagar, December, 17, 1947, *Sardar Patel's Correspondence* Vol I. p. 94.

[11] *Ibid.*, p. 94-5.

[12] Proclamation of Maharaja Hari Singh, Dated 5th March,1948.

charged with the task of proposing a constitution for the government of the State. The deputies to the National Assembly would be elected on the basis of universal adult franchise. In the constitutional structure evolved by the proposed National Assembly, the minorities would be secured special wheightage to guarantee them their rights and their due place and position in the State.

The dual government did not taken long to run into trouble. Neither the Maharaja nor the leaders in the Interim Government considered the Ayangar Scheme and, therefore, sound neither of the two sides made any serious efforts to evolve a spirit of compromise. In fact, the two sides in the dual government espoused radically divergent views and followed diametrically different directions. The Confernce leadership idealised the complete transfer of power to the political instrument which were answerable to the people, drastic reorganisation in the property relations, particularly in regard to the land tenures and a relatively wider role for the Muslim majority in the State. The Maharaja, however was not, prepared to reframe the existing instruments of social and political control, without finding alternatives which were acceptable to him. The dual government came to a tragic end. The Maharaja sulked away and closed himself in his palace at Jammu, almost indifferent to what the Interim Government did. On their part, the leaders in the Interim Government also, did not follow a policy of sympathy and compromise. Where the Maharaja required to be consulted, he was bullied and where he was needed to be informed, he was ignored. The agreement pertaining to the conduct of the Government was hardly followed by the Interim authority and the reserved subjects were shown scant respect.[13]

Within a few months the crisis deepened. The Maharaja complained to the Government of India about the high handedness of the Interim Government. This hardened the temper of the Conferance leaders who had now become severly critical of the Maharaja and openty asked for

[13] M. K. Teng and Santosh Kaul Kashmir Special States, p. 36.

his abdication.[14] The State Department made some feeble attempts to reconcile the differences between the Maharaja and the Conference leaders. The efforts proved futile. The stalemate lingered on for some more time. In April 1949, Maharaja Hari Singh was advised by Sardar Patel to leave the State and make his son, Yuraj Karan Singh, the Regent.[15] The Maharaja relinquished his office on 9th June, 1949. The proclamation issued by the Maharaja read:

> Whereas I have decided for reasons of health to leave the State for a temporary period and to the Yuvaraj Shree Karan Singh ji Bahadur for that period all my powers and functions in regard to the Government of the State;
> Now, therefore, I hereby direct and declare that all powers and functions, whether legislative, executive or judicial which are exerciseable by me in relation to the State and its Government, including in particular my right and prevogative of making laws, of issuing proclamations, Orders and ordinancees of remitting, commuting or reducing sentences and of pardoning offenders, shall during the period of my absence from the State be exercisable by Yuvaraj Shree Karan Singh ji Bahadur.

Constituent Assembly

In January, 1950, the Constituent Assembly of India adopted the Constitution of India. Special provisions were included in the draft for the Jummu and Kashmir State. Prpvision of the Constitution of India, pertaining to the princely States, which had acceded to the Indian Union and were listed in Part B of the First Schedule, appended to the Constitution, were not made applicable to the State. The State was reserved the right to institute a Constituent Assembly and frame a separat constitution for its government. The powers of the Parliament to legislate in regard to the State, were limited to the matters

[14] Sardar Patel to Jawaharlal Nehru, 11th May, 1949. Sardar Patel Correspondence, p. 268.
[15] Sardar Patel's correspondence p. 268.
[16] *Ibid.*

which were declard by the President, in consultation with the Government of the State, to correspond to the Instrument of Accession. The residuary powers were retained by the State.[16]

On 27the October, 1950, the General Council of the National Conference adopted a lengthy resolution on the political situation in the State and called upon the Government to order the convocation of a Constituent Assembly. The resolution read:

> This meeting of the General Council of the All Jammu and Kashmir National Conference views with great concern the repeated failure of the United Nations to redress the wrongs of aggression of which the people of the State continue to be victims. The failure, in its opinion, is due to the continued concessions given to Pakistan by placing a premium on her intransigence.
>
> The indecision and unrealistic procedure odopted so far has condemned the people of the State to a life of agonising uncertainity. The all Jammu and Kashmir National Conference is gravely Concerned and cannot any longer afford to ignore the perpetuation of these conditions of doubt and frustration. In the opinion of the General Council, time has come when the initiative must be regained by the people to put an end to this indeterminate state of drift and indecision. The General Council recommends to the Supreme National Executive of the people to take immediate steps for convening a Constituent Assembly based upon adult suffrage and embracing all sections of the people and all the Constituents of the State for the purpose of determining the future shape and affiliations of the State of Jammu and Kashmir. In this sovereign Assembly embodying the supreme will of the people of the State, we shall give ourselves and our children a constitution worthy of the tradition of our freedom struggle and in accordance with the principles of New Kashmir.[17]

[17] Resolution of General Council of All Jammu Kashmir National Conference, 1950.

On 1st May, 1951, Yuraj Karan Singh issued a proclamation and ordered the institution of the Constituent Assembly.[18] The Proclamation envisaged that Assembly would be constituted of the representatives of the people elected on the basis of universal adult franchise and secret ballot. In accordance with the Proclamation, the State was to be divided into electoral districts each covering forty thousand of population. Voting age was fixed at twenty-one. General elections to the Assembly were held in September, 1951. The Assembly was inaugurated on November 5, 1951.

On 7th November, the Constituent Assembly set up a Basic Principles Committee and an Advisory Committee on Fundamental Rights and Citizenship. The Basic Principles Committee was charged with the task of finalising the principles on which the Constitution of the State would be based. The Advisory Committee on Fundamental Rights and Citizenship was asked to formulate the criteria for citizenship in the State and define the scope and content of the rights, the people in the State, would be given as well as the related legal guarantees the Constitution would envisage to safeguard those rights. In accordance with the special provisions of the Constitution of India pertaining to the State, the provisions of the Constitution of India with regard to citizenship and Fundamental Rights, did not apply to the State. The Conference leaders had their own reservations about the extension of the provisions, embodied by the Constitution of India, with regard to citizenship and Fundamental Rights. They were extremely cautious about the State-Subject Rules promulgated by the Maharaja in 1928, and did not favour any modification in the restrictions imposed on the acquisition of citizenship rights in the State. They were also particular to save the landed estates abolition laws and the liquidation of debt legislation, from the effect of the extension of Fundamental Rights to the State. The Conference leaders were, therefore, desirious of determining for themselves the content of the Fundamental Rights that could be made available to the people of the State.

Meanwhile the Yuraj amended the Constitution Act of 1939,

[18] Proclamation issued by the Head of Jammu and Kashmir State on 1st May, 1951.

incorporating in it the provisions of the proclamation in pursuance of which the Interim Government was constituted and the Constituent Assembly was convened.[19] The enactment, envisaging the amendments, was made by the Yuraj in exercise of the inherent powers, reserved by the Maharaja for himself under the Constitution Act of 1939. The Maharaja exercised all the powers of the government, within the prescriptives of the Paramountcy, which also included powers pertaining to the external relations of the State, treaty rights and territorial jurisdiction. The accession of the State to the Indian Union, however, replaced the different variants of the Paramountcy by the defined pattern of the division of powers between the Union and the States in India, in which the defence of the State, its foreign affairs, communications and other implied powers were transferred to the Indian Government. The technical independence, the State enjoyed in the British colonial structure was quashed, when the Instrument of Accession was signed by the Maharaja and the State became a part of India. Not only was the State brought within the ambit of the territorial jurisdiction of the Union of India, it was also integrated into the constitutional jurisdiction created by the Constitution of India. In effect, the jurisdiction, exercised by the Maharaja, was completely dissolved. The Amendment Act was enacted to incorporate these changes in the Constitution Act of 1939. Accordingly the jurisdiction of the State Government was redifined.

The most significant modification, the Amendment Act made in the Constitution of the State, was the incorporation of ministerial responsibility in the State Government.[20] The inherent powers of legislation and government and the powers of prerogative exercised by the Maharaja were dissolved. The powers of the prerogative were limited to the grant of pardons, reprieves, respites and remission of punishments. The power to promulgate ordinances was also taken away from the Maharaja. Power was vested with the Council to submit to the Maharaja ordinances and promulgations for his assent. The

[19] Act No.XVII of 1951 (S.2001).

[20] The Constitution Amendment Act, 1951, Sec. 2, Substitution of Section 7.

powers vested with the Maharaja were to be exercised by him on the advice of his Council of Ministers. In effect the superintendence, direction and control of the civil government was vested with the Ministry. The Council was constituted of the Prime Minister, who was appointed by the Maharaja and the other Ministers who were appointed by the Maharaja on the advice of the Prime Minister.[21] The powers vested in the Prime Minister to make rules for the business of the Council subject to the sanction of the Maharaja were also dissolved. These powers were vested with the Council and the Council was empowered to make rules with regard to the transaction of its business. Provisions were also made by the Amendment Act for the appointment of the Deputy Ministers to work in such ministries as the Council considered necessary.

Provisions embodied by the Constitution Act of 1939, with regard to the Praja Sabha were repealed, and provisions were laid down by the Amendment Act by virtue of which the Constituent Assembly of the State was to exercise the powers of the Legislative Assembly.[22] The Legislative Assembly was empowered to make rules and standing orders to regulate its procedure and the conduct of business and until such rules were made, the rules and standing orders which regulated the procedure and conduct of the business in the Praja Sabha were to govern the procedure and conduct of business in the Legislative Assembly. The Legislative Assembly was to be presided over by a Speaker who was elected by the Assembly and in his absence by a Deputy Speaker, who was also elected by the Assembly. The Speaker of the Assembly was empowered to exercise the powers which were exercised by the President of the Praja Sabha.[23]

The Legislative Assembly was vested with unrestricted powers to legislate on matters and subjects not placed within the competence of the Parliament of India.[24] The competence of the Legislative Assembly, therefore, extended to all the residuary powers which were retained by the State. The division

[21] *Ibid.*
[22] *Ibid.*, Sec. 13(2).
[23] *Ibid.*, Sec. 16.
[24] *Ibid.*, Sec. 20.

of powers between the reserved and transferred subjects, envisaged by the Constitution Act, 1939, was abrogated.

The Assembly was also vested with complete powers to control the finances of the State.[25] No revenues and expenditures could be authorised except by the authority of law. All expenditures were made votable by the Assembly and subject to its sanction. The Council was empowered to authorise extra-expenditure over that voted by the Assembly, subject, however, to the sanction of the Assembly. The Constitution Act of 1939 envisaged the classification of expenditure into the "Expenditure charged upon the revenues of the State" and "Expenditure proposed to be met from the revenues of the State". The Praja Sabha was empowered to vote on the "Expenditure proposed to be met from the revenues of the state".[26] The provisions of the Amendment Act redefined the "Expenditure charged upon the revenues of the State" to include:

(i) allowances of the Maharaja and the other expenditure relating to his office;
(ii) debt charges for which the State was liable including interests, sinking fund charges and other expenditure relating to the raising of the loans and service and redemption of debt;
(iii) salaries, allowances and pensions of the Judges of the High Court and the members of the Board of Judicial Advisers;
(iv) expenditure relating to the Constituent Assembly and its staff;
(v) sums required to satisfy any judgement, decree or award of any court, arbitral tribunal; and
(vi) any other expenditure declared by the Amendment Act or any other Act of the Legislative Assembly as "expenditure charged upon the revenues of the State."[27]

The Assembly was empowered to discuss the "expenditures charged upon the revenues of the State" but was not empowe-

[25] *Ibid.*, Sec. 31.
[26] *Ibid.*
[27] *Ibid.*

red to vote on them. The powers, vested with the Maharaja and the Council to over-ride the decisions of the Assembly on votable demands, were abolished.[28] All other restrictions, placed on the competence of the Assembly in regard to financial matters and the appropriation of funds, were also abrogated.[29]

The restrictions placed on the introduction of Bills in the Assembly, discussion of the Bills and Resolutions and amendments or Bills with regard to religious rights, usage and all other restrictions on the power of the Assembly to legislate in general, were abolished.[30] The over-riding powers exercised by the Prime Minister and the Council over the conduct of business in the Assembly, preservation of order during the debates, regulation of questions and supplementaries and the procedure of the presentation of the budget, were also extinguished.

Sadar-I-Riyasat

In April 1952, the National Conference leaders finally resolved to abolish the dynastic rule of the Dogras. The Conference leaders also formulated the principles, on the basis of which, the proposed Constitution of the State would be framed. Guidelines were also laid down by them with regard to the structure of the government, official language and the flag of the State. Seventy-three of the Seventy-five members of the Constituent Assembly belonged to the National Conference. They were, in fact, returned unopposed to the Assembly. Packed with a preponderant majority of the National Conference cadres, the Assembly immediately settled down to work out the instructions, the Conference leaders laid down. On 10th June, 1952, the Basic Principles Committee of the Assembly submitted an Interim Report recommending the abolition of the Dogra rule.

[28] *Ibid.*, Sec. 32.
[29] *Ibid.*
[30] *Ibid.*, Sec. 21 and 22.
[31] *Ibid.*, Sec. 23.

After due deliberation and careful thought, the Committee is of the opinion that the institution of monarchy is a relic of the feudal system which was based on mass exploitation of the resources of a country and the labour of its people for the self-aggrandisement of an individual and a limited class of associates. As such, the Committee considers the system opposed to the aspirations of the people for an untrammelled democratic order, the spirit of which is surging throughout all countries of the world. It strongly feels that the continuance of a monarchical system would be the imposition of an anachronism particularly when these monarchies are disappearing fast in many parts of the world under the compelling forces of history and social change.

The Committee recommended the replacement of the Maharaja by an executive head who would be elected to his office for a fixed term. The Committee reported:

It is the considered view of the Committee that sovereignty does and must reside in the people and that all power and authority must flow from the expression of their free will. The State and its Head, respectively symbolise this sovereignty and its centre of gravity. The Head of the State represents the authority vested in him by the people for the maintenance of their rights. The promotion of this vital principle of constitutional progress makes it imperative that this symbol of state power should be subject to the vote of the people. The Committee, therefore, strongly feels that consistent with the democratic aspirations of the people of the State, the office of Head of the State should be based upon the elective principle and not upon the principle of heredity. This would afford opportunities to all citizens to rise to the highest point of authority and position, with the support and confidence of the people. The spirit of equality and fraternity required by democracy, demands that in no sphere of State activity should a citizen be debarred from participating in the progress of his country and the advancement of its ideals and traditions. It is clear that the hereditary principle in the appointment to any office of

power curtails the people's choice and to that extent, restricts their right to elect suitable person of outstanding merit and personal qualities to that position. The process of democratisation will not be complete till the highest office of the State is thrown open to the humblest of the land and in this manner, the Head of the State will be repository of the unbound respect, confidence and esteem of the people.

The Committee came to the conclusion: In view of these considerations the Committee feels that there must be a sense of finality about the decisions in regard to this fundamental issue. Accordingly, the Committee recommends that:

(a) the form of the future constitution of Jammu and Kashmir shall be wholly democratic,
(b) the institution of hereditary Rulership shall be terrminated, and
(c) the office of the Head of the State shall be elective.[32]

Sheikh Mohamad Abdullah explained the decision of the National Conference and said that the hereditary rule of the Dogras was incompatible with democratic principles as well as the aspiration of the people. In the Constituent Assembly he observed:

> The Basic Principles Committee has recommended the termination of hereditary dynastic rule and its replacement by a President elected by the people for a limited period and not for life-time. If he does not efficiently discharge his duties during his tenure of office, he will be placed under impeachment. However, the Committee has made the recommendation for the termination of this hereditary rule in the light of the desires of the people who under the guidance of National Conference have sacrificed their lives, have gone to jails and put up in narrow cells inhabited by serpents and scorpions. Hundreds of woman-folk have been dishonoured, hundreds made to crawl on their bellies

[32] Constituent Assembly Debates, III Session, 10th June, 1952.

and thousands rendered martyrs by shedding their blood. It is the saying of leaders that freedom cannot be achieved by requesting but by struggle. Only that nation attains freedom which sheds its blood for this cause. This again cannot be achieved by begging. Freedom can be obtained only when the people of Jammu, Kashmir and Ladakh—nay of the whole State—make sacrifices in the manner in which lakhs of people like Luther have struggled for their liberation. I want to make it clear to you that this issue has not cropped up under some sentiment of vengeance or because the Raja fled at a time when catastrophe came. It is not even because we were imprisoned and now we have gained power so we should wreak vengeance on him. I want to say to the world that sovereignty belongs to the people and not to an individual. Thinkers came on the scene to attain this basic right and effected the transfer of sovereignty to the people. This was not done in view of personal interest. Unless you give sacrifices in this field, you cannot achieve freedom. The representatives of Ladakh, Jammu, Kishtwar, Ramkot, Poonch, Kargil, Bhaderwah and from every nook and corner of Kashmir have assembled in this house to decide the issue on behalf of 40 lakhs people in the light of the recommendation made in its report by the Basic Principles Committee.[33]

On 12th June, the report of the Basic Principles Committee was unanimously adopted by the Constituent Assembly. The same day, Durga Prasad Dhar moved another resolution in the Assembly praying that instructions be given to the Drafting Committee of the Assembly to prepare appropriate proposals for the implementation of the recommendations of the Basic Principles Committee. The resolution read:

This Assembly resolves that the recommendations contained in the Interim Report of the Basic Principles Committee as adopted by the Assembly be implemented and that for this purpose the Drafting Committee be directed to place before

[33] *Ibid.*, 10 June, 1952.

this Assembly appropriate proposals in the form of resolution or otherwise, within a period of one month from the date of passing of this resolution.[34]

The presentation of the Basic Principles Committee report in the Constituent Assembly brought to surface a number of political issues. The abolition of the Dogra rule involved the dissolution of the prerogatives and the powers, the Maharaja was vested with. It also involved the institution of a new executive instrument with defined statutory powers. It was necessary to delimit the quantum of authority the new executive would be vested with and define the lines its power would run through. As a matter of fact, the entire constitutional structure, sought to be devised by the Constituent Assembly, was required to be adjusted within the imperatives of the political structure, the Constitution of India envisaged. Differences had already set in between the two Governments with regard to the plenary powers the State leaders claimed for the Constituent Assembly, the application of the provisions of the Constitution of India with regard to Citizenship, Fundamental Rights, Supreme Court and the Emergency Powers of the President, to the State, and the placement of the State within the framework of political control the Constitution of India envisaged. The Government of India had indicated its preference for a reconsideration of the division of powers between the Central Government and the State and the extension of the provisions of the Constitution of India to the State with regard to Citizenship, Fundamental Rights, Emergency powers, jurisdiction of the Supreme Court, Directive Principles etc. This necessitated a fresh demarcation of the area of autonomy for which the Constituent Assembly of the State would be commissioned to devise statutory provisions. Pandit Nehru observed in the Parliament:

Now this position might well have lasted some time longer, but for the fact that the Constituent Assembly of Kashmir came into existence and came into existence with our goodwill and came with our consent. Now it is sitting down to

[34] *Ibid.*, 12th June, 1952.

draw up its Constitution, it has to be in some precise terms; it cannot be fluid. Therefore, the question arose that nothing should be done by the Constituent Assembly of the State which does not fit in with the Constitution, which in no sense is contrary to it or conflicts with any part of it.[35]

In July 1952, a Conference between the leaders of the two Governments, was convened in Delhi, to find a settlement of the outstanding political issues and formulate principles on the basis of which the Constituent Assembly of the State would proceed on its work. An agreement was finally drawn up by the representatives of the two sides on most of the constitutional problems including those related to the application of the provisions of the Constitution of India with regard to Citizenship, Fundamental Rights, the jurisdiction of the Supreme Court, and the division of powers between the Union and the State. Agreement was also reached with regard to the abolition of the Dogra rule, flag of the State and its official language. It was agreed that the State Government would place the stipulations of the agreement before the Constituent Assembly so that the Constituent Assembly would make the necessary recommendations to the President of India to order the amendments in Article 370 of the Constitution of India. The agreement stipulated:[36]

(i) that the provision of the Constitution of India with regard to citizenship would be extended to the State subject to the condition that the State Legislature would be reserved the Right to define and regulate the rights and privileges of the "State Subject" of the State with regard to the acquisition of the property and the appointment to the services;
(ii) that the provisions of the Constitution of India with regard to the Fundamental Rights would be extended to the State;
(iii) that the provisions of the Constitution of India with

[35] J.L. Nehru, Statement in Council of States, August 5, 1952.
[36] Statement of Sheikh Mohamad Abdullah on Delhi Agreement in the Constituent Assembly, 11th August, 1952.

regard to the emergency powers of the President of India and the original jurisdiction of the Supreme Court would be made applicable to the State;

(iv) that the residuary powers would be retained by the State;

(v) that the hereditary rule of the Dogras would be abolished and the Head of the State would be recognised by the President of India on the recommendations of the State Legislature and hold office for a period of five years;

(vi) that the State would retain its flag but the Union flag would have a supremely distinctive place in the State; and

(vii) that Urdu would be the official language in the State.

Immediately after the Delhi Agreement was signed, the Drafting Committee of the Constituent Assembly settled down to formulate proposals with regard to the Dogra rule on the basis of the resolutions passed by the Constituent Assembly in June. The Committee presented its report on August 19, 1952. The report stipulated:[37]

(i) that the Head of the State would be the person recognised so by the President of India on the recommendations of the Legislative Assembly of the State;

(ii) that the Head of the State would be designated "Sadar-I-Riyasat of Jammu and Kashmir";

(iii) that the recommendations of the Legislative Assembly would be made by election;

(iv) that the Sadar-I-Riyasat would hold office during the pleasure of the President;

(v) that the Sadar-I-Riyasat would remain in office for a term of five years; and

(vi) that the Sadar-I-Riyasat would exercise the powers and undertake functions that were exercised by the Maharaja of the State under the Constitution Act of 1939, as amended by the Constitution Amendment Act of 1951 till the Constitution of the State was framed

[37] Report of the Drafting Committee, Fourth Session, 20th August, 1952.

by the Constituent Assembly and the powers of the Sadar-I-Riyasat were specified and defined therein.

The recommendations of the Drafting Committee were accepted by the Constituent Assembly on August 21, 1952. In November, the Constitution Act of 1939, was amended to incorporate the provisions of the resolutions passed by the Assembly. In accordance with the Amendment Act the institution of the hereditary monarchy was abolished. The Head of the State was designated the Sadar-I-Riyasat. All rights, authority and jurisdiction pertaining to the Government and the territories of the State, were vested in with the Sadar-I-Riyasat. The Sadar-I-Riyasat was to exercise his powers on the aid and advice of his Council of Ministers.[38]

The tenure of the Sadar-I-Riyasat was fixed at five years. He was entitled to such emoluments and allowances as the Constitution of the State fixed. Pending the enactment of the Constitution, he was to receive such emoluments and allowances as the Constituent Assembly fixed.[39]

The Amendments Act laid down the procedure for the election of the Sadar-I-Riyasat by the members of the Legislative Assembly. The Sadar-I-Riyasat was to be elected by the members of the Legislative Assembly by secret ballot and with single transferable vote. The Prime Minister of the State was vested with the authority to communicate the decision of the Assembly to the President of India for his recognition. The Amendment Act incorporated the stipulations of the Drafting Committee according to which the person, elected by the Legislative Assembly, was to be recognised by the President of India as the Sadar-I-Riyasat of Jammu and Kashmir State. The Sadar-I-Riyasat before, he entered upon his office, was required to make and subscribe an oath of affirmation to devote himself to the "service and well-being of the people of the State" and to "preserve, protect and defend the Constitution of the State."[40]

The Amendment Act laid down a number of qualifications

[38] Constitution Amendment Act, 1952, Sec. 4.
[39] *Ibid.*, Schedule 1.
[40] *Ibid.*, Sec. 12 and Schedule 1.

for election to the Sadar-I-Riyasat. No person was eligible to seek the election to the office of the Sadar-I-Riyasat unless:

(i) he was a State Subject of Class I as defined in the State Subject Definition Notification No. I-L-/84 of April 20, 1927;
(ii) he had completed the age of twenty-one years on the date he filed his nomination papers; and
(iii) he was eligible for being chosen as the member of the Constituent Assembly.

In the months that followed the Delhi Agreement, the relations between the State leaders and the Government of India deteriorated further. In fact, a tragedy of great magnitude in the outlook of both the Indian leaders and the leaders of the National Conference was, that after the assumption of independence, they failed to adjust their political objectives and coordinate their political operatives. The two sides had found identification in their approaches and objectives about the struggle for national independence. They were, however, not able to evolve a similarity of views and strategies with regard to the politics of the government after the country won freedom. The structural compulsion of the Indian politics overwhelmed the expressions of the historical struggle to which both Pandit Jawaharlal Nehru and Sheikh Mohamad Abdullah were so devoted. The events came to a head in August 1953. On 8th August, the Sadar-I-Riyasat dismissed the ministry headed by Sheikh Mohamad Abdullah. The Sheikh was arrested in the early hours of the morning of 9th August. The same day, Bakshi Gulam Mohamad, the Deputy Prime Minister in the disbanded ministry, was appointed the Prime Minister of the State.

In October, 1953, the Constituent-Assembly was convened to finalise the principles on which the Constitution of the State would be based and consider the implementation of the Delhi Agreement pertaining to the federal relations between the State and Union. On October 20, 1953, the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental Rights were reconstituted by a resolution of the Constituent Assembly. The Delhi

Agreement was referred to the two Committees for consideration. On January 4, 1954, a Joint Sub-Committee was constituted to draft proposal on the implementation of the Delhi Agreement. The Sub-Committee submitted its report with the draft proposals to a joint session of the two Committees on January 22, 1954. On February 3, 1954, Syed Mir Qasim, the Chairman of the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental Rights, presented the report of the Advisory Committee on Citizenship and Fundamental Rights to the Constituent Assembly.[41] The Committee recommended that directives be issued to the Drafting Committee of the Constituent Assembly, which had also been reconstituted, to frame proposals for the extension of the Constitution of India with regard to Citizenship, Fundamental Rights, powers of President, the Emergency Powers and the jurisdiction of the Supreme Court, to the State of Jammu and Kashmir. In regard to Citizenship, the Committee recommended the application of the Provisions of the Constitution of India pertaining to citizenship with the reservation that any application would not prejudice the existing rules relating to the State Subjects. The Committee proposed that the rules regarding the State-Subjects be redefined and liberalised and the State-Subjects be reclassified into a uniform class of "Permanent Residents". The Committee recommended:

> The State having acceded to the Union of India, every State subject and every person having his domicile in the state is a citizen of India under the provisions of the Constitution of India. It is, however, recognised by the Government of India that this position would not affect the existing State Subject definition. While the Committee adheres to principle underlying this definition it feels that the definition should be liberalised in keeping with the changed times. The Committee, therefore, recommends that all the three classes of State-Subject provided in the definition be removed and a uniform class of permanent residents be established.

[41] Report relating to Citizenship and Fundamental Rights, February 3rd, 1954.

Accordingly every person residing in the State who is a State-Subject of Class I or Class II or who after having acquired immovable property in the State has been ordinarily residing there for a period of not less than ten years prior to the date of enforcement of this provision shall be permanent resident of the State.

The powers of the State Legislature to define 'permanent residents of the State' in any manner it deems fit and to regulate the special rights and privileges of the permanent residents of the State, should be preserved. A majority of not less than two-thirds of the total membership of the House shall be necessary for the exercise of this power. The Committee is of the opinion that while adequate provisions to that effect should be incorporated at an appropriate place in the Constitution of India, the provisions of Part II of the Constitution of India relating to citizenship should also be made applicable to the State and care should be taken to protect the special position accorded to the State-Subject to be known as "Permanent Residents of the State" and their special rights and privileges. Necessary modification shall also have to be provided in that part to enable these subjects of the State who had migrated to Pakistan in 1947 in connection with the disturbance or in fear of the same, to return to the State under a permit of resettlement or permanent return issued under the authority of law that would be made by the State Legislature in due course.

The Committee is of the view that that the State Legislature should also be competent to make provisions with respect to acquistion and termination of the status of permanent residents of the State and until the State Legislature enacts provisions in that behalf, the existing Ijazatnama Rules should continue to remain in force and the existing procedure for obtaining a State-subject certificate should apply for the purpose of securing a certificate as to the status of a permanent resident.[42]

The Committee further recommended that the provisions of

[42] *Ibid.*

the Constitution of India embodying the Fundamental Rights and the related legal guarantees be extended to the State with modifications and reservations that were deemed necessary in view of the economic reforms the State Government had undertaken and the special rights that were sought to be reserved for the State-subjects. The Committee reported:

> The question of evolving Fundamental Rights has been considered and discussed at length by the Committee. It has been recognised by the Government of India that the Fundamental Rights as contained in part III of the Constitution of India, should not come in the way of Land Reforms already introduced by the State or the reforms that might be undertaken by the State in future. This way particularly necessary in view of the fact that the State has not provided for any compensation for the land expropriated under its Land Reforms. The Government of India has also recognised that the special rights and privileges enjoyed by the Permanent Residents of the State relating to acquisition and holding of immovable property and in respect of employment under the State shall be fully safeguarded.

The Drafting Committee presented its report to the Constituent Assembly on February 11, 1954. An annexure, which defined the jurisdiction of the Union was appointed to the report. The annexure embodied the provisions of the Delhi Agreement with the modifications which were introduced in it after the Advisory Committee on Citizenship and Fundamental Rights was reconstituted and the approval of the Union Government was secured. The report, alongwith the annexure was presented to the President of India after it was approved by the Constituent Assembly. On 14th May, 1954, the President of India promulgated the Constitution (Application to Jammu and Kashmir) Order, 1954.[43]

The Presidents' proclamation ordered the application of the following provisions of the Constitution of India to the

[43] Constitution (Application to Jammu and Kashmir) order No. C.O. 48. dated 14th May, 1954.

State:

1. Provisions pertaining to the Union and its territories with the exception that the powers of the Parliament to increase and diminish the area of the State or alter its name be subject to the consent of the State Government.
2. Provisions pertaining to the citizenship subject to the condition that 'Permanent Residents' of the State who had migrated to territories under the occupation of Pakistan but returned to the State for Settlement, were reserved the right to acquire Indian citizenship on a 'permanent return' issued to them under the authority of any law made by the legislature of the State and that the State Legislature was reserved the right to define the 'Permanent Residents' and confer on them special rights or privileges or impose on other persons restrictions in regard to the settlement in the State, employment in State service and the grant of scholarships and other aids provided by the State Government.
3. Provisions pertaining to Fundamental Rights with reservations and exceptions in regard to right to personal liberty, right to freedom, and right to property.
4. Provisions with regard to Government of India with the exceptions that:

   (a) the representatives of the State for the House of the People were to be appointed by the President on the recommendations of the State Legislature;
   (b) the powers of the Parliament to extend the appellate jurisdiction of the Supreme Court were limited to the extent that any such extension could only be made on the request of the State Legislature.

5. Provisions of the Union List, except Central Bureau of Intelligence and Investigation, Preventive Detention, Courts of Wards, High Court and extension of its jurisdiction, trading and other corporations, Weights and Measures, Mines, Mineralogy, regulation of labour, safety in mines and oil fields, Ancient Monuments, Census, interstate migration, elections to the Parliament, Election Commission, Audit and Accounts, etc.

6. Provisions with regard to administrative relations between Centre and States with certain reservations.
7. Provisions with regard to official language of the Union to the extent of the official language for communication between the States and the Union, official language for communication between the States and the Union, and the proceedings of the Supreme Court.
8. Provisions pertaining to the proclamation of emergency caused by war and external aggression.
9. Provisions pertaining to the amendment of the Constitution of India with the exception that such amendments would be effective in relation to the State only after their application was extended to the State by an order of the President in accordance with the provisions envisaged by Article 370.

The application of the provisions with regard to the Citizenship, Fundamental Rights, the jurisdiction of the Supreme Court and the Emergency powers of the President of India, to the State, necessitated consequential amendment in the existing, constitutional provisions in the State. On 8th April, 1955 the Jammu and Kashmir Constitution Act of 1939 was again amended to incorporate in it, the changes brought about by the President's Order of 1954.[44] The Amendment Act was given retrospective effect and was deemed to have come into effect from May 14, 1954, the day, the Presidential Order was promulgated.

The provisions of the Constitution of India, with regard to citizenship were incorporated in the Constitution Act of 1939. A subsidiary jurisdiction was created by the Act and the State-Subjects were redefined into a uniform class of 'Permanent Residents'. The classification of the State-Subjects provided for by the State-Subjects Rules was consequently abolished. The "Permanent Residents" were defined to include:[45]

(i) State-Subjects of Class I or Class II as defined in the State-Subject Notifications of 1927 and 1928;
(ii) persons who had acquired immovable property in the

[44] Constitution Amendment Act, 1955 (2011).
[45] Jammu and Kashmir Constitution Amendment Act, 1955; Part A.

State in pursuance of 'Ijazat-Nama' Rules in force in the State and had ordinarily been residing in the State for not less than ten years before the promulgation of the Presidential Order, 1954; and

(iii) State-subjects of Class I and Class II who had migrated to Pakistan after March, 1947, but had returned to the State under a "Permit of Settlement" in the State issued by any law made by the State Legislature.

The State Legislature was reserved the right to define the "Permanent Residents" and confer on them special right or privileges or impose on other persons restrictions in regard to employment in the State, settlement in the State, and right to scholarship and other forms of aid provided by the State Government. The State Legislature was empowered to make laws with regard to the acquisition of the status of "Permanent Residents" in the State and until the State Legislature enacted such provisions, the existing "Ijazat-Nama Rules" were to continue to remain in force.[46]

Provisions were made by the Amendment Act, by virtue of which the Board of Judicial Advisors was abolished. The Board had, in fact, become redundant after the appellate jurisdiction of the Supreme Court of India was extended to the State. The High Court of the State was invested with the highest judicial function in the State in all matters of original and appellate jurisdiction. The Court was vested with original jurisdiction to hear all cases of which the value exceeded twenty thousand rupees. Under the Constitution Act of 1939, the High Court was empowered to hear cases, the value of which exceeded ten thousand rupees. The High Court was also vested with the advisory jurisdiction which had been reserved for the Board of Judicial Advisors under the Constitution Act of 1939. The Court was empowered to give advice to the Council of Ministers on any question of fact or law.[47]

Another major change, the Amendment Act incorporated in the Constitution Act of 1939, was that pertaining to the immunities and privileges of the Legislative Assembly and the

[46] *Ibid.*, Sec. 5-A (b).
[47] *Ibid.*, Secs, 6, 9, 10 and 11.

members of its Committees. The immunities and privileges of the Assembly continued to be governed by the Constitution Act of 1939, made for the Praja Sabha and its Committees. In accordance with the provisions of the Amendment Act, the Legislative Assembly and its Committees were granted all such privileges and the immunities as were enjoyed by the members of the Parliament of India in accordance with the provisions of the Constitution of India.[48]

Constitution of Jammu & Kashmir

The Constituent Assembly of the State completed its work in November 1956. On 17th November, the draft constitution was finally approved by the Assembly. It was brought into force on 26th of January, 1957.[48]

Within the scope of the provisions of the Constitution of India pertaining to citizenship, the Constitution of the State classified the people of the State into a special category of "Permanent Residents".[49] The classification was based on the provisions of the Jammu and Kashmir Constitution Amendment Act of 1955, by virtue of which the Jammu and Kashmir Constitution Act of 1939, was amended and provisions with regard to the 'Permanent Residents' of the State were laid down. The "Permanent Residents" were defined to cover the people of the State, who were born and were residing in the territories of the State, when it was founded by Maharaja Gulab Singh in 1846, the people who settled in the State later but before 1885, the people who settled in the State under special permission before 1911, and the people who took permanent residence in the State and acquired immovable property under the 'Ijazat Nama Rules' before 14th May, 1944. The Legislature of the State was vested with the power to bring any section of the people living in the State within the ambit of the definition of the "Permanent Residents". The State Legislature was also empowered to confer on the 'Permanent Residents" any special rights and regulate and modify

[48] *Ibid.*, Sec. 4.
[49] Constitution of Jammu and Kashmir, sec. 1.
[50] *Ibid.*, part III.

any special rights and privileges enjoyed by them.

The Constitution envisaged a parliamentary government for the State. The State Government was to be headed by the Sadar-I-Riyasat, who was elected by the State Legislature and confirmed by the President of India.[51] The qualifications, which were required to be fulfilled by a candidate for the election to the office of the Sadar-I-Riyasat, were laid down by the Constitution. No candidate could be nominated for the election unless he was a "Permanent Resident" of the State, was more than twentyfive years in age and was qualified to be elected to the Legislative Assembly. The tenure of the Sadar-I-Riyasat was fixed at five years and he remained in office during the pleasure of the President of India. The Sadar-I-Riyasat was to receive a salary of 5,500 Rupees per month, besides other emoluments and allowances. The salary and other emoluments were to be charged on the Consolidated Fund of the State. On the assumption of his office the Sadar-I-Riyasat was required to make and subscribe an oath of affirmation to devote himself to the service and the well-being of the State and to "preserve, protect and defend the Constitution and the law".

The executive powers of the State, which extended to all matters not transferred to the Union, were vested with the Sadar-I-Riyasat. The Sadar-I-Riyasat was to exercise his powers himself or through his officers in his name. He was empowered to appoint the Prime Minister of the State and on his advice the other members of the Council of Ministers. He was vested with the power to allocate business among the Ministers in the Council and make rules for the convenient transaction of the business of the government. He was also vested with the power to appoint the Advocate General[52] of the State and the members of the Public Service Commission.

The Sadar-I-Riyasat was an integral part of the State Legislature. He was vested with the power to summon, prorogue and dissolve the Legislative Assembly. He was empowered to address the two houses of the Legislature and send

[51] *Ibid.*, Part V.
[52] *Ibid.*, Sec. 42.

messages to them. He was empowered to nominate eight members to the Legislative Council from among the economically and socially backward sections of the society or from among people who had special knowledge and practical experience in art, literature, science, social service and cooperative movement. All Bills passed by the Legislature were required to be submitted to him for his assent.

The Sadar-I-Riyasat was vested with the power to promulgate Ordinances during the recesses of the Legislature, if he was convinced that the circumstances warranted immediate action. The Ordinances promulgated by the Sadar-I-Riyasat had the same effect, the acts of the Legislature had.[53]

The Sadar-I-Riyasat was vested with certain financial powers as well. He caused the State Budget to be laid before the Legislative Assembly. Demands for any grants could not be made except on his recommendations. The statements for supplementary grants and additional expenditure were also caused to be laid before the legislature by him.

The Sadar-I-Riyasat was also empowered to grant pardon and reprieve, and suspend, remit and commute sentences awarded to persons convicted of offences against any law relating to matters over which the executive powers of the State extended.

The model of the parliamentary government which the Constitution embodied, carried the principle of responsibility to its technical extremes. The Constitution provided for the institution of a Council of Ministers headed by the Prime Minister and charged with the function to aid and advise the Sadar-I-Riyasat in the exercise of his powers.[54] An absolute limitation was imposed on the Sadar-I-Riyasat, which stipulated that he would exercise his powers only on the advice of his ministry.[55] Formally, the Prime Minister and the other Ministers were appointed by the Sadar-I-Riyasat and remained in office during his pleasure. In actual practice, however, the Council constituted an independent political instrument which was installed in office by the party, which

[53] *Ibid.*, Sec. 91.
[54] *Ibid.*, Sec. 35.
[55] *Ibid.*, Sec. 35(2).

commanded the majority in the legislature and remained in office so far the majority continued to support it.

As the constitutional head, the Sadar-I-Riyasat possessed the right to be informed of all the decisions of the Council with regard to the administration and the process of legislation. He was secured the right to call for any information from the Council. To preserve the principle of collective responsibility, he was empowered to return decisions taken by the Ministers to the Council, in case he felt that the decisions deserved to be considered by the Council. The functions were enumerated by the Constitution and guaranteed to the Sadar-I-Riyasat.[56] However, he could hardly put them to any purposeful use. He functioned under a severe limitation and could hardly face his Ministry with the powerful determination, the prestige of prerogative, conferred on a Consititutional head in a parliamentary structure.

In one respect the Sadar-I-Riyasat was vested with powers, which under the Constitution of India, any State governor was not given. The Constitution of the State envisaged provisions by virtue of which the Sadar-I-Riyasat was empowered to declare a state of emergency in the State in case of constitutional breakdown.[57] Under the provisions of the State Constitution, the Sadar-I-Riyasat was vested with the powers to assume to himself the powers of the Government and legislation if he found that the Government of the State could not be conducted in accordance with the Constitution. The Sadar-I-Riyasat was empowered to suspend the operation of the provisions of the Constitution, wholly or in part, to give effect to the proclamation of the emergency. The Sadar-I-Riyasat was, however, not empowered to assume the powers of the High Court of the State or suspend the provisions of the Constitution pertaining to the High Court. A specific limitation was placed on the powers of the Sadar-I-Riyasat by virtue of which he was bound to declare a state of emergency only with the concurrence of the President of India.

Ordinarily, the proclamation of emergency was to remain in force for six months after it was issued. No express limi-

[56] *Ibid.*, Sec. 44.
[57] *Ibid.*, Sec. 92

tation was placed on the powers of the Sadar-I-Riyasat to reimpose emergency after it had ceased to be operative. Every proclamation of emergency was required to be laid before each house of the legislature as soon as it was convened. Where the Sadar-I-Riyasat assumed to himself the powers of legislation, any law made by him during the period of emergency, was to remain in force for two years after the emergency ceased to operate.

The Constitution provided for a bicameral legislature empowered to make laws on the subjects reserved for the State Government.[58] The lower house i.e. the Legislative Assembly was composed of hundred members chosen by direct election on the basis of universal adult franchise. The Council was constituted of indirectly elected representatives and elements which gave measured weightage to functional groups, local bodies, economically and socially backward sections of the society and other unorganised social interests. Twentyfive of the seats in the Assembly were reserved for the territories of the State under the occupation of Pakistan. The occupied territories however, were not included in the delimitation of the constituencies and members of the Assembly for these seats were not to be elected till the occupied areas were liberated. The reserved seats were not be taken into account for the reckoning of the total membership of the Assembly. Special weightage was given to the Scheduled Castes and women. Of the thirtysix members the Legislative Council had, eleven members were to be elected by the Legislative Assembly from each of the two provinces from among the residents of the State, at least one being elected from the district of Ladakh and Skardu. One member, for each of the two provinces, was to be elected by the electorates constituted of the members of the Municipal Councils, the Town Area Committees and the Notified Area Committees in each of the two provinces. Two members, for each of the two provinces were to be elected by the electorates constituted of the members of the Panchayats and such other local bodies in each of the two provinces as the Sadar-I-Riyasat specified. Eight of the members were to be nominated

[58] *Ibid.*, Part VI.

to the Council by the Sadar-I-Riyasat to give special representation to backward classes, and the persons who had to their credit outstanding contribution in arts, literature, science and social service.

The State legislature was empowered to legislate on all subjects placed within the jurisdiction of the State Government. The legislature was also vested with the power to control the finances of the State. No taxes were to be imposed without the approval of the Legislature and no expenditures undertaken without its sanction. The estimates of the receipts and expenditures were to be laid before the legislature for its approval. Since the Constitution envisaged a parliamentary government, the legislature exercised complete control over the executive function of the State. The Constitution clearly underlined collective responsibility and the subservience of the Council of Ministers to the Legislative Assembly.[59] The State Legislature was also vested with the powers to amend the Constitution of the State, subject, however, to the limitation that the Legislature could not initiate any amendments in regard to the provisions of the Constitution of India applicable to the State, the provisions of the Constitution of the State confirming the accession of the State to the Union, provisions which defined the powers reserved for the State and the provisions dealing out the procedure of the amendment of the State Constitution.

The Constitution recognised the pre-eminence of the Legislative Assembly over the Council.[60] The powers vested with the Council were mostly revisory. In matters of legislation, Bills rejected by the Council or retained for more than three months, were deemed to have been approved by the Council in case they were passed by the Assembly a second time. The Assembly was reserved the ultimate veto on any modifications and amendments made by the Council to any Bill considered by the Council. In financial matters the Council did not enjoy any substantial measure of powers. All money Bills were to be introduced in the Assembly. Money Bills passed by the Assembly and sent to the Council for consideration

[59] *Ibid.*, Sec. 36.
[60] *Ibid.*, Sec. 75

were to be approved by the Council in fourteen days failing which the Bills were deemed to have been passed by it.

A noteworthy feature of the Constitution was the inclusion of the provisions for an independent judicial structure with the High Court at the apex.[61] Express provisions with regard to the appointment, tenure and the removal of the judges of the Court were included in the Constitution to secure the independence of judiciary.

The Court was reserved the jurisdiction which the High Court of the State exercised before the Constitution was enforced. Subject to the general provisions of the Constitution and the law for the time being in force, the original and appellate jurisdiction, the High Court exercised at the time the Constitution came into force, was preserved. In addition to the original and the appellate jurisdiction the Court retained, the Constitution explicitly vested the Court with the powers to:[62]

(i) transfer cases to itself from the subordinate courts;
(ii) superintend and control the subordinate courts;
(iii) control its own staff; and
(iv) exercise the powers of the Court of Record.

A significant aspect of the powers vested with the Court was that regarding the enforcement of the Fundamental Rights.[63] The High Court was empowered to issue writs and orders in the nature of Habeas Corps, Mandamus, Prohibition Quo-Warrants and Certiorari for the enforcement of the Fundamental Rights, provided for by the Constitution of India and made available to the people of the State by the Presidential Proclamation of 1954. The power of the Court to issue writs was not confined to the enforcement of the Fundamental Rights only. The Court was vested with the power to issue writs and orders for other purposes also. Whenever, the High Court found that any person within its jurisdiction acted in a way not authorised by law or violated the rights of the citizens, the Court was empowered to issue orders for remedies and redress.

[61] *Ibid.*, Sec. VII.
[62] *Ibid.*, Sec. 102.
[63] *Ibid.*, Sec. 103.

Provisions were also included in the Constitution for the statutory regulation of the public services in the State.[64] The State Legislature was empowered to regulate by law, the recruitment of the public servants as well as determine the conditions of service of the civil service cadres. To secure the immunity and independence of the public services from influence and favouritism, and ensure the recruitment of capable and efficient officials, the Constitution provided for the appointment of a Public Service Commission. The members of the Commission were to be appointed by the Sadar-I-Riyasat.[65] Their tenure was fixed at five years. The members of the Commission were barred to accept any office under the State Government after their retirement. The members were liable to be removed from their office by the Sadar-I-Riyasat on grounds of misbehaviour, after the High Court of the State, on a reference, made to it, had recommended their removal. The members were also liable to be removed from their office by the Sadar-I-Riyasat in case they were declared insolvent or took any other employment or got interested in any agreement involving the Government of the State or the Government of India and earned profits of such an agreement or were considered to be unfit to continue in office due to infirmity of body or mind.

The Commission was vested with the power to advise the State Government on:[66]

(i) all matters relating to the method of recruitment to public services;
(ii) the principles to be followed in making appointments, promotions and transfers from one service to another and on the suitablity of the candidates for such appointments, promotions and transfers;
(iii) all disciplinary matters affecting the public servants including the memorials of petitions relating to such matters; and
(iv) any other matter specifically referred to the Commission by the Sadar-I-Riyasat.

[64] *Ibid.*, Part IX.
[65] *Ibid.*, Sec. 128.
[66] *Ibid.*, Sec. 133.

The Legislature of the State was empowered to extend the scope of the function of the Commission to matters in respect of the services of the State and matters pertaining to services in the public institutions such as the local bodies or public corporations. A limitation was placed on the competence of the Commission as the State Government was empowered to make provisions for the reservation of the employments in favour of any class of "permanent Residents", not adequately represented in the services of the State. The Government was not required to consult and seek the advice of the Commission in the recruitment of any such classified services.

The most characteristic feature of the Constitution was the comprehensive and radically progressive list of the Directive Principles of State Policy, it embodied.[67] The inclusion of the Directive Principles in the Constitution was modelled after the Directive Principles of State Policy enumerated in the Constitution of India. The Principles were an innovation, which the framers of the Constitution adopted, to place a greater premium on political obligation and describe a wider sphere of State activity. Section 13 of the Constitution laid down:

> The prime objective of the State consistent with the ideals and the objectives of the freedom movement envisaged in "New Kashmir" shall be the promotion of the welfare of the mass of the people by establishing and preserving a socialist order of society wherein all exploitation of man has been abolished and wherein justice—social, economic and political —shall inform all the institutions of the national life.

A distinctive feature of the Directive Principles was that the principles were committed clearly defined ideological objectives. The Principles unambiguously stipulated that the State would promote the welfare of the people by establishing a "socialist order"of society. Section 14 of the Constitution read:

> The State shall develop in planned manner the productive forces of the country with a view to enriching the material and cultural life of the people and foster and protect:

[67] *Ibid.*, Part IV.

(i) the public sector where the means of production are owned by the State;
(ii) the cooperative sector where the means of production are cooperatively owned by individuals; and
(iii) the private sector where the means of production are owned by an individual or corporation employing labour provided that the operation of this sector is not allowed to result in concentration of wealth or the means of production to the common detriment.

The Constitution of the State, therefore, envisaged a readjustment in the economic structure at its base. On the one hand the principles provided for the State ownership of a portion of the means of production and on the other, they put a heavy embargo on private ownership by stipulating that the operation of the private sector was not allowed to result in the concentration of wealth or means of production. As a matter of fact the framers of the Constitution sought to provide for the structural reorganisation and the functional reorientation of the entire economy of the State. They voted for the drastic regulation of the prevailing property relationships.

The Directive Principles also included provisions regarding social legislation, social security and social insurance. The state was to ensure:

(i) the right to work with payment in accordance with its quality and quantity, and a minimum wage established by law;
(ii) just and humane conditions of work leisure, social and cultural opportunities and emancipation from abuse, economic necessity and compulsion to enter unsuitable avocations and employments ;
(iii) adequate maintenance in old age, sickness, disablement, unemployment and undeserved want;
(iv) medical aid;
(v) free education upto the university standard within a period of ten years from the commencement of the Constitution, compulsory education for children, facilities for adult education and part-time technical and professional training;

(vi) for women equal pay for equal work, maternity benefit and medical care, maintenance in abandonment and protection against discourtesy, defamation, hooliganism and other forms of misconduct;

(vii) equality of women in all social and political matters;

(viii) special care for the socially and educationally backward sections of the people, promotion of their educational material and cultural interests and protection against social injustice;

(ix) promotion of the health of the people by public hygiene and prevention of disease;

(x) development of agriculture and animal husbandry;

(xi) organisation of the village panchayats into self-governing units;

(xii) separation of the judiciary from the executive and the establishment of humane, cheap, certain objective and impartial judicial system; and

(xiii) elimination of superstition, ignorance fanaticism, communalism, racialism and backwardness.

Chapter 9

Aftermath

The dismissal of the Interim Government headed by Sheikh Mohammed Abdullah in 1953, and the institution of the second Interim Government,was followed by turbulance which slowed down the process of the constitution-making in the state. Evidently, the disintegration of the National Conference led to deep difference of opinion among its leaders on the future disposition of the State. A sizable section of the Conference leadership supported the independence of the State which some of the western powers, then arranged against India in the United Nations, had offered to support. The National Conference wanted the Indian State to defend Jammu and Kashmir from the invading armies of Pakistan. After that was accomplished the Conference leaders sought to use the proposed plebiscite, envisaged by the United Nations resolutions, to disengage the State from India. They sought to secure it a place of equidistance from India and Pakistan on the ground that the Muslims of Jammu and Kashmir constituted a separate Muslim nation which like the Muslims nation in India deserved a separate and independent State.

The dismissal of the Interim Government, headed by Sheikh Mohammad Abdullah was meticulously planned in close consultation and with the approval of the Prime Minister of India. Nehru sent General Hira Lal Atal, a senior officer of the Indian army, who had accompanied the first contingent of the Indian troops, air-lifted to Kashmir in October 1947, to supervise the operation of the involved in the dismissal of the Interim Government. Atal, as well as Karan Singh, kept Nehru informed of every minute detail about the developments in the State.

Widespread disturbances followed the fall of the first Interim Government. The section of the Conference cadres, and leaders which supported independence, was joined by the pro-Pakistan

elements and forces, which had opposed the accession of the State to India, but which had gone underground in 1947. In Kashmir, and at several places in the Muslim majority districts of Jammu province, masses of Muslim demonstrators protested against the dismissal of Sheikh Mohammad Abdullah. At a number of places, the mob indulged in violence and clashed with the Indian security forces, which had been called out to maintain order and peace.

In the highly strung atmosphere of the cold war, the conspiracy to carve out an independent State of Jammu and Kashmir, posed a serious threat to the entire northern frontier of India. The Indian Government was therefore, keen to forestal a situation, in which any Muslim eruption in Kashmir, fomented by Sheikh's followers and the pre-Pakistan forces, would weaken the Indian position in the Security Council. The disintegration of the National Conference had considerably impaired theMuslim commitment to support the accession of the State to India.

The Constituent Assembly of the State was called into session in October 1953, two months after the dissolution of the first Interim Government. Most of the members of the Assembly were trusted men of Sheikh Mohammad Abdullah. Some of them did not support the independence of the State, but many of them accepted the formation of the second Interim Government with considerable reluctance. Bakshi Gulam Mohammad was a shrewed politician. He succeeded in pursuading them to extend their support to his government. On 20 October 1953, the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental Rights, were reconstituted. Sheikh Mohammad Abdullah was removed from the Chairmanship of the two Committees and Syed Mir Qasim was elected the chairman of the Committees in his place. The Drafting Committee was also reconstitued and Mirza Afzal Beg, was removed from its chairmanship. Girdhari Lal Dogra, a National Conference leader of Jammu was appointed the chairman of the Drafting Committee.

On 4 January, 1954, a Joint Sub-Committee of the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental Rights, was constituted to reexamine the Delhi Agreement and make proposals for its implementation. The Sub-Committee presented its recommendations in a joint session of the two committees on 22 January 1954. In their joint session, the

two Committees approved the provisions of the Delhi Agreement.

On 27th January 1954, a high-power delegation, headed by Bakshi Gulam Mohammad, in which were included, Gulam Mohammad Sadiq, the President of the Constituent Assembly and Syed Mir Qasim, the Chairman of the Basic Principles Committee and the Advisory Committee on Fundamental Rights and Citizenship, went down to Delhi to finalise a settlement on some of the issues on which controversy had risen after the conclusion of the Delhi Agreement in 1953.

On 2 February 1954, Syed Mir Qasim presented the report of the Basic Principles Committee and the Advisory Committee on Fundamental Rights and Citizenship to the Constituent Assembly. The Basic Principles Committee proposed the extension of the Constitution of India to Jammu and Kashmir, in pursuance of the Delhi Agreement. "The State's accession to the Union" the report stipulated, "entail certain responsibilities on the Centre for protecting the interests of the State and also for its social and economic development. In order to enable the Centre to discharge its responsibilities, which devolve upon it under the Constitution, the provisions of the Constitution of India, which may be necessary for this purpose should be made applicable to the State in an appropriate manner. While preserving the internal autonomy of the State all the obligations which flow from the fact of accession and its elaborations as contained in Delhi Agreement, should find an appropriate place in the Constitution."

The Committee recommended the application of the Constitution of India to the State in respect of the Government of India, the proclamation of emergency due to war and external aggression, official language and amendment of the Constitution, with exceptions and preservations, deemed necessary to safeguard the autonomy of the State. The Committee recommended that the provisions of the Constitution of India in regard to the division of the Constitution of India in regard to the division of powers between the federal government and the States should be extended to the State with such exceptions and reservations as were deemed necessary.

The Advisory Committee on the Fundamental Rights and Citizenship recommended the extension of the provisions of the Constitution of India to the State in respect of, citizenship and fundamental rights and related legal guarrantees, subject to the

condition that the domicilary rules in operation in the State, known as the State-Subject Rules, were not prejudiced. The State Legislature was reserved the power to classify the State-subjects, in respect of acquisition of ownership of property, employment in the services of the State and the settlement of non-State-subjects in the State.

The recommendations of the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental Rights, were approved by the Constituent Assembly. On the basis of the recommendations of the Constituent Assembly, the President of India promulgated the Constitution (Application to Jammu and Kashmir) Order 1954, which extended the application of the Constitution of India to the State in respect of :

(*i*) Union and its territories;

(*ii*) Citizenship;

(*iii*) Fundamental rights and related consitutional guarrantees;

(*iv*) Government of India;

(*v*) Jurisdiction of theSupreme Court;

(*vi*) Union List;

(*vii*) Administrative relations between the Centre and the States;

(viii) Official language; and

(*ix*) Amendment of the Constitution of India.

The application of the Constitution of India to the State, brought about by the Presidential Order, was however, subject to drastic reservations and exceptions. These exceptions were mainly aimed to retain the powers of the government to safeguard the communal precedence of the Muslims in the State and protect its separate political organisation and restrict the rights of the Hindus and other non-Muslim minorities in the State, which constituted around thirty eight percent of the population of the State. The application of the provisions of the Constitution of India in regard to the territories of India, were subject to the conditions that the Muslim State-Subjects, who had migrated to Pakistan in 1947, would be able to return to the State and acquire Indian citizenship on a permit for resettlement of the Hindu and Sikh State-Subjects, who had been displaced from the territories of the occupied by Pakistan. No

provisions, were made with regard to the Hindu and Sikh refugees as well, who had migrated to the State from Punjab in 1947.

The Presidential Proclamation of 1954, was a half-way measure, which envisaged partial application of the Constitution of India to the State. The Proclamation was denounced by the National Conference cadres, who had broken away after the dismissal of the first Interim Government, as well as the pro-Pakistani elements in the State, as a measure aimed to integrate the State into the Indian Union and deprive the Muslims of their right to decide the finality of its accession. They accused the Government of India, as well as the Second Interim Governmentof having removed Sheikh Mohammad Abdullah to undo the independence of the State and subject the Muslims in the State to the dominance of the Hindus in India. The Muslim middle peasantry, which had replaced the landed aristocracy of the Dogras, the new class of the Muslim commercial magnates, trading agents, the small industrial entrepreneurs, the Muslim bureaucracy and the flanks of Muslim mercenaries, rared by the National Conference, strongly disapproved of the Presidential Proclamation on the agreement that it would effect the Muslim identity of the State.

The Hindus and the other minorities also disapproved of the Proclamation. They had been devastated by the enforcement of the Muslim precedence in the government and society of the State. The Presidential Proclamation did not alter the political instruments, which the first Interim Government had established, nor did it provide protection of the fundamental rights envisaged by the Indian Constitution against discrimination on the basis of religion. The application of the fundamental rights to the State was subject to severe limitations and reservations which hollowed them of their basic content.

In January 1956, an agreement was reached between the Govenrment of India and the Government of the State on the financial integration of the State in the financial organisation of India. In accordance with the agreement the State agreed to receive 55 per cent of the net proceeds of income tax, 40 per cent of duties of excise on matches, tobacco and vegetable products and hundred percent of the proceeds of the estates duty levied and collected by the Government of India in the State. The Government of India agreed to grant financial assistance to the State to bring

up the total revenue of the State from these sources to two and a half crores of rupees annually. The proportional rights in respect of properties and assets of the Post and Telegraph departments, air transport, railways and State forces were taken over by the Government of India. The provisions of the Constitution of India in regard to financial relations between the Union and the States, were extended to the State in January 1958.

The provisions of the Constitution of India in regard to the High Court in the States were partially extended to the State in 1954. In 1957, the provisions of the Constitution of India with regard to the removal of the High Court Judges, embodied in Article 218 of the Constitution of India and the provisions in regard to the restrictions which the Constitution of India placed on them to practice before lower courts, was extended to the State.

In 1957, agreement was also reached between the Government of India and the State Government in regard to the powers of Auditor and Comptroller General of India. A resolution was adopted by the Constituent Assembly of the State on 14 November, 1957, which recommended to the President of India the extension of the Provisions of the Constitution of India to the State with regard to Auditor and Comptroller General of India. The Presidential Order, bringing the State within the ambit of the powers of the Auditor and Comtroller General of India, was promulgated on 15 February, 1958.

The integration of the administrative services of the State, came up for consideration in 1957. An agreement was reached between the State Government and the Government of India to extend the operation of the Constitution of India to the State. In pursuance of the agreement, the Indian Parliament, enacted enabling measures in May 1957, to extend the provisions of the Constitution of India to the State in regard to the administrative services. In 1959, the provisions of the Constitution of India with regard to the powers and functions of the Election Commission of India, were extended to the State.

In 1964, the provisions of the Constitution of India pertaining to the emergency arising of the breakdown of the constitutional machinery in the State, was extended to Jammu and Kashmir. Provisions of the Constitution of India in regard to : (a) Jurisdiction

on concurrent subjects in the Concurrent List of the 7 Schedule of the Constitution of India; (b) trade and commerce; and (c) certain subjects in the Union List of the 7 Schedule of the Constitution of India, but included in the powers reserved for the State, were also extended to the State.

The application of the Provisions of the Constitution of India to Jammu and Kshmir, differs from the constitutional position of other Indian State. In their application to Jammu and Kashmir the provisions of the Constitution of India are divided into three categorises :

(*i*) Provisions which are not applicable to the Jammu and Kashmir State;

(*ii*) Provisions which are applicable to the Jammu and Kashmir State; and

(*iii*) Provisions which are applicable to Jammu and Kashmir with exceptions and reservations.

The provisions of the Constitution of Indian which are saved application in regard to the Jammu and Kashmir State, pertain to the government of the States, the Directive Principles, of State Policy, public services, amendment of the Constitution of India and a state of constitutional breakdown in any State which fails to comply with or give effect to any directions given by the Union to such State in the exercise of its executive powers.

The provisions of the Constitution of India, which are applicable to the Jammu and Kashmir State and the provisions which are made applicable to the State with exceptions and reservations are interwoven into a complex pattern of intricate alternatives and specifications. The alternatives and reservations represent severe deviations from the fucntional norms the Constitution of India envisages. Over the years most of these deviations have assumed dimensions which have ultimately supervened the basic structure of the Constitution of India in relation to Jammu and Kashmir. The provisions of the Constitution of India, which apply to the State, with exceptions and reservations, pertain to territories of the Union, Citizenship, Fundamental Rights, Jurisidiction of the High Court in the State, the powers of the Supreme Court of India, the elections, Emergency powers of the President of India official

language of the Union, and amendments of the Constitution of India.

The provisions of the Constitution of India which apply to the Jammu and Kashmir State without any exceptions or reservations pertain to the powers, and the functions of the President of India, the Union Council of Ministers, election, and powers and privileges of the Parliament and the Parliamentary procedure, the appointment and functions of theComptroller and Auditor-General of India and the Union Public Service Commission.

The exlusion of the State from the Constitutional organisation of India, and its reconstitution into a separate political identity, based upon the Muslim majority character of its population, had serious repercussions on the evolution of democratic process in the State. No stable and organic relationship between the Union and the State could be constructed on communal balances which the Conference leaders sought to establish. The leaders of the National Conference, consciously sought to exclude Jammu and Kashmir from the basic structure of the Indian Constitution, to isolate it from the secular political organisation, the Constitution of India envisaged.

In Interim Government remained in power for almost a decade and virtually ruled the State by decree. The modifications envisaged by the Presidential order of 1954, extended the application of the fundamental rights, embodied by the Constitution of India to the State. However, the relief fell far short of the rights enjoyed by the people in theother States of India. Most of the fundamental rights, extended to the State were hollowed of their pith and substance by the exceptions and reservations imposed on them. The powers of the State Legislature to frame and construct rules and regulations for their enforcement, the power to impose restrictions on the rights and also determine the reasonability of such restrictions and the limitations placed upon the right to constitutional remedies, left the whole set of dundamental rights with little significance and scope. The Constitution of Jammu and Kashmir, after it was framed in 1956, and brought into force in 1957, did not envisage any rights and constitutional safeguards against arbitrary use of political power.

The recognition of the separate Muslim identity of the State based upon the Muslim majority character of its population conflicted with the secular integration of the Indian people, the Constitution of India envisaged. The communal procedence of the Muslim majority, the Interim Government enforced, alienated the Hindus and the other minorities, a little less than half the population of the State. Their resistance to the isolation of the State from the imperatives of secularism, the Constitution of India envisaged, led the Muslims to seek fresh guarrantees to safeguard their interests. The contradiction ultimately broke up the National Conference. The installation of the second Interim Government estranged the Kashmiri speaking Muslims from the National Conference.

SECESSIONIST MOVEMENT

In 1955, the leaders and the cadres of the National Conference, who had broken away from the Conference after the dismissal of the first Interim Government in 1953, and joined the secessionist movement in the State, formed the All Jammu and Kashmir Plebiscite Front. Mirza Afzal Beg, who had been released from the prison, assumed the leadership of the Front. The Front denounced the Government of India for having resiled from its commitment to hold a plebiscite in the State to determine the disposition of its people in regard to its accession, and accused the Indian Government of having deposed Sheikh Mohammad Abdullah to scuttle the right of self-determination, the Muslims of the State were ensured by the United Nations resolutions. The Front claimed that the accession of the State to India was disputed and subject to right of self-determination which the resolutions of the Security Council assured the Muslims of the State. The Front committed itself to the freedom of the Muslims of Kashmir from the Indian dominance, which they alleged was perpeterated by the Indian government upon them.

The movement for a plebiscite launched by the Plebiscite Front, was a camouflage to cover its real objective to secure the secession of the State from India and the unification of the Muslims with their brothers in Pakistan. The Front was launched with the connivance and support of Pakistan and huge funds were made available to it by various agencies operating in the occupied Kashmir in support of the secessionist and pro-Pakistan forces. The second Interim Government held the first elections in the State Legislative Assembly in 1957; in accordance with the constitution of Jammu

& Kashmir. The plebiscite Front joined by Pro-Pakistan forces called upon the Muslims to boycott the elections, to exhibit their opposition to any political process, India initiated in the State. The Front leaders exhorted the Muslims to ostracise all the elements among the Muslims who participated in the elections or extend support to the second Interim Government.

The impact of the boycott was widespread and the elections were held in a state of overwhelming fear and suspicion. Large masses of the Muslim population boycotted the elections. The Muslims and the other minorities and a sizable section of the Muslim population joined the elections in the Kashmir Valley and the Muslim majority districts of the Jammu province. In the rest of the State, the participation of the people, mainly Hindus, Sikhs and the Buddhists, was overwhelming. Unsure of the civil services, which was dominantly Muslim, the State Government deputed Hindus and Sikhs officials, to conduct the elections in most of the constituencies of the Kashmir Province. The loyalty of the Hindus to India was unquestioned, and they joined the battle against the Plebiscite Front without demur. The whole wrath of the leaders and cadres of the Front fell upon them. The Front accused them of conspiracy to deprive the Muslims of their right to self-determination.

The Front leaders, launched a virulent campaign against the second Interim Government, charging it of having rigged the elections. The allegations that the elections were not fair, were not altogether unfounded. In the Kashmir Province the boycott provided an opportunity for the National Conference leaders and cadres to manipulate sizable majorities in their favour. Evidently, the election machinery, mainly operated by the Hindus and the Muslims, who opposed the Front, acted in a way to help the Conference candidates. For the Hindus, the conflict with the Pro-Pakistan forces and the Front was fundamental. Their fight against the secessionist forces was vital to their survival. They realised more clearly than anybody else the dangerous portent of the boycott and its implications for their future. Their resistance to Muslim secessionism was permeated by two fundamental principles; that they were as important as the Muslims in any future settlement in regard to the State and the claim made by the Muslim majority to communal precedence, was not valid.

The elections in 1962, followed the same course. The boycott of the elections was enforced by the Plebiscite Front and the other Pro-Pakistan forces, with fierce determination. The deterioration of the Indo-Chinese relations, and the secret compact between China and Pakistan, provided a fresh impetous to the secessionist movement in the State. The Indian Government, fearful of the increasing influence of the secessionist forces and the inability of the second Interim Government to deal with them effectively, offered to negotiated a settlement with the Front leaders. The Front leaders spurned the offer.

Of the many inexplicable political maneuvers Nehru resorted to, the removal of Bakshi from his office under the cover of the Kamraj Plan,was the most anamoulous. Neither Nehru nor his colleagues in the Indian Government realised the gravity of the situation in Jammu and Kashmir, where the Plebiscite Front had consolidated its hold over the Muslims considerably. Bakshi Gulam Mohammad had ruled the State for ten years, by following a dual policy of seeking to buy Muslims support in return for State patronage and to suppress all opposition to his authority by force. In the process, his government, in actual practice, led to the growth of a widespread vested interest in Muslim communalism on the one hand and stunted the evolution of representative institutions on the other hand. By a well-knit structure of controls and permits, Bakshi was able to create new channels of patronage which he used to remain in power. He was an intelligent man, and knew the mind of his Muslim brothern. He managed to keep his government in power and muster enough strength to face the onslaught of the Plebiscite Front. His emphasis on the education of the weaker and more backward sections of the Muslim masses, earned him a measure of sympathy among them.

With his exit, the entire structure of power and patronage, he had forged to buy peace from the Muslim secessionist forces, crumbled rapidly. The successor government,headed by one of his erstwhile colleagues, Gulam Mohammad Sadiq, abondoned both the politics of patronage as well as power. Sadiq sought to marginalise the influence of the Plebiscite Front by liberalising the administration and redevising the channels of State patronage. He could not accomplish either of two tasks. He could not contain the process of socialisation, the Plebiscite Front had commenced to

reorient the Muslim outlook to the demand for Pakistan.Nor could he redevise the channels of patronage, Bakshi had fabricated.

The policy of liberalisation offered a wider ground to the Front as well as the pro-Pakistan forces to carry on the secessionist movement unhindered, which in the aftermath of the Indian debacle in the Sino-Indian conflict, had assumed fresh vigour. Perhaps, he inspired the reconcilliation between the Congress leaders and the leaders of the Plebicite Front, as a result of which Sheikh Mohammad Abdullah and some of his close associates in the Front, were sent by Nehru to Pakistan to prepare the ground for a settlement of the Kashmir dispute.

In Pakistan, the leaders of the Front confided in the President of Pakistan, that the movement for Plebiscite, the Front was leading, was solely aimed to liberate the Muslims of Jammu and Kashmir from the Indian tutelage. Perhaps, Sheikh Mohammad Abdullah lost his caution and sought the support of Pakistan for a settlement, which underlined the acceptance by India as well as Pakistan of an autonomous position for the State, which in course of time would be widened to bring the State closer to Pakistan. Ayub Khan upbraided the Front leaders and rejected any proposals, other than the unification of the Jammu and Kashmir State with Pakistan. Nehru died while the Front leaders were still in Pakistan.

The new Prime Minister of India, Lal Bahadur Shastri reversed the policies followed by his predecessor and told the Front leaders that he did not approve of any secessionist movements in the State. The Front leaders, angered up, returned to Kashmir and called upon the Muslims to prepare for a fresh struggle to overthrow the Indian yoke.

In 1965, Pakistan inducted thousands of trained commandos armed with sophisticated weapons into the State. The infiltration of armed commandos into the State was aimed to foment a Muslim rebellion against India. Evidently, the local collaborators provided effective cover and adequate supplies necessary for their operations. By the time the State woke to the situation, the storm had already burst. In a series of quick military manuevers, the infiltrators managed to burrow into several areas of the Srinagar city, which was their primary target.

While the confrontation between the infiltrators and the Indian security forces developed into bizzare battles of attrition, Pakistan

launched a massive military offensive on the borders of Jammu. In a few days, the Indian troops mounted an offensive on Pakistan across its international border.

The war was brought to an end, by the intervention of several major powers, on the basis of proposals, which envisaged the withdrawal of the forces of the two countries to the position they held before the outbreak of the hostilities.

The Indo-Pakistan war, led Pakistan to a reappraisal of its strategies to cut off the State from India. The Muslim secessionist organisations inside the State had failed to provoke rebellion against India. The infiltration failed to achieve its objectives because the secessionist forces inside the State did not provide the logistic support to the infiltrators. In the following years, Pakistan changed its entire strategy and evolved a new plan to militerise the secessionist forces in the State, which could at a more appropriate time wreck the Indian defences from within. The first militant secessionist organisation, the Jammu and Kashmir Liberation Front, was launched by Pakistan in the occupied territories of the State. The founding of Jammu and Kashmir Liberation Front marked the beginning of a long war of attrition, which the Muslims in the State were expected to wage against India. The Liberation Front received funds, arms and training from Pakistan and was avowedly committed to the secession of the State from India and its unification with Pakistan.

By 1969, the Liberation Front spread its operations across the Line of Actual Control, into the Valley of Kashmir and the Muslim majority districts of the Jammu Province. A large section of the leadership of the Plebiscite Front established close liason with the activists of the Liberation Front and the agencies in Pakistan, which supported the Front.

INDIRA-ABDULLAH ACCORD

With the break up of Pakistan in 1971, the secessionist movements in Jammu and Kashmir received a set back. The disintegration of Pakistan shocked the leaders of the Plebiscite Front. The defection of several officers of the intelligence organisations of Pakistan during the Bangaldesh war, led to startling revelations of deep links between the leaders of the Front and Pakistan. The revelations gave a severe exposure to the real intentions of the Front leaders, and the involvement of Pakistan in supporting the

movement for plebiscite, the Front spearheaded. After protracted negotiations between the Frontleaders and the Government of India, spread over a number of years, the Front leaders agreed to abondon the movement for plebiscite and dissolve the Plebiscite Front. In 1975. The Front was wound up, and the National Conference, which was now defunct, revived in consequence of an accord, reached between Sheikh Mohammad Abdullah and the Indian Prime Minister, Indira Gandhi. The accord envisaged :

(*i*) the dissolution of the Front, withdrawal of the movement for self-determination and the acceptance of the finality of the accession by Sheikh Mohammad Abdullah and the other Front leaders; and

(*ii*) the transfer of state-power to the Front leaders.

The government of the Congress party in power in the state, headed by Syed Mir Qasim, subsequently resigned and Sheikh Mohammad Abdullah was elected the leader of the Congress Parliamentary Party in the State Legislature. A new government, headed by Sheikh Mohammad Abdullah, was inducted into the office in March 1975.

The defeat of the Congress in the elections to the Indian Parliament in 1977, had a drastic effect on the course of political events in the State. Sheikh Mohammad Abdullah, in the belief that the Congress had been defeated decisively, tried to establish fresh balances with the Janata Government in Delhi. Perhaps, he sought to take advantage of the change in the Government of India, to secure a revision of the existing relations between the State and the Union, which he had failed to persuade Indira Gandhi to accept. There was a lingering belief in the mind of many Front leaders, that the Congress alone, stood in the way of a settlement on Kashmir. Later events proved, that the National Conference leaders, followed a calculated policy, which was aimed to consolidate the secessionist forces in the State and prepare the ground for an eventual break with India.

The efforts of the National Conference leadership for concilliation with the Janata Government exasperated the local Congress leadership. In 1977, the Congress Parliamentary Party in the State Legislature decided to withdraw support from the Conference government. Evdiently, the decision of the Congress

Parliamentary Party had the approval of the central leaders of the Congress, including Indira Gandhi.

The Congress Party had an absolute majority in the Assembly and laid a claim to form the government in the State. The Congress leadership contented that the Congress had a majority in the State Legislature and Sheikh Mohammad Abdullah, who had been elected the leader of the Congress Party, as a sequel to the Indira -Abdullah Accord, did not have the mandate of the people to claim the prerogrative to seek the dissolution of the Assembly. Lakshmi Kant Jha, a civil servant of the government of India, had risen to great eminence due to the patronage Indira Gandhi had showered upon him. He did not give an affront to Sheikh Mohammad Abdullah. He knew that the restoration of the Congress to power in the State would displease the Janata Government and geopardise his position. He left Indira Gandhi to her fate, turned down the claim of the Congress party to form the government and ordered the dissolution of the Assembly.However, he proclaimed a state of emergency in the State by virtue of the powers vested in him under Section 92 of the Constitution of Jammu and Kashmir. Indeed, it would have been a travesty of ministrial responsibility, if Sheikh Mohammad Abdullah, who had only one member, Mirza Beg, in the Legislative Assembly, to support him, would have been asked to continue in office as the head of the care-taker government.

The elections to the Legislative Assembly were held in June 1977. The Congress, the Janata and the Plebiscite Front, now in the new garb of the National Conference, entered the fray. The Congress had a sizable support base in Jammu and Ladakh and the Section of Muslims population in Kashmir committed to support it, constituted mainly of the Muslim elements, which had opposed the movement for plebiscite in the State.

The Janata unit in Kashmir, which had been hurriedly organised by the Janata high command in Delhi, was constituted of an assortment of leaders and cadres who had diverse political commitments. Most of the senior leaders in the Janata unit were men who had been in the thick of the secessionist movements in the State. Maulana Sayed Masoodi, the Convenor of the State Janata Unit, had played a major role in shaping the movement for plebiscite in the State, and he was among the most prominent of the Front leaders, who accompanied Sheikh Abdullah to Pakistan in 1964.

Mohidin Qara, a vetran freedom fighter of the "Quit Kashmir" fame, had broken away from the National Conference in 1950, and raised the banner of revolt against India in 1953, demanding the accession of the State to Pakistan. Prem Nath Bazaz, a radical humanist and a follower of M.N. Roy, had also opposed the accession of the State to India and extended his support to Pro-Pakistan movements in the State for a long time, almost till the end of the Indo-Pakistan war of 1965. The Janata leaders, sought to win over the support of the Muslims, who opposed the National Conference on account of the Indira-Abdullah Accord, which they considered to be a betrayal of the cause of the Muslims in Kashmir.

In the Jammu Province, the National Conference exercised little influence, except in the Muslim majority constituencies, where the Plebiscite Front had deeply entrenched itself. The National Conference rightly settled down to consolidate its support in the Kashmir Province, and the Muslim majority Constituencies of the Province of Jammu and the division of Ladakh. Throwing to the winds the Indira-Abdullah Accord, the National Conference leaders launched a clandestine campaign in which they exhorted the Muslims to support the National Conference which alone could lead them to freedom. The National Conference leaders sought to reassure the Muslims that the Accord was a step towards the liberation of the state and they had assumed State power to wreck the Constitution of the State from within. A section of the Plebiscite Front cadres, were reorganised into a new organisation the "Youth Federation," which spread the message that the National Conference was committed to the Muslimisation of the State and its freedom from the Indian imperialism.

The Conference leaders had developed a technique of double talk : reassure the Indian leaders of their commitment to secularism on the one hand and promote the Muslimisation of the State and consolidate the movement for its secession on the other. The employed the same technique of double talk to assure the Muslims that they had not abondoned the struggle for their self-determination but changed their strategies to achieve their goal. Two generations of the Muslims had lived through the movement for plebiscite and a whole generation of their youth was subjected to a long process of socialisation to self-determination, liberation from India and the integration of the State with Pakistan. Indeed, the generations, which

grew under the shadows of the movement for plebiscite, formed the main edifice of the struggle for Pakistan in the State. They constituted the more active, and ideologically committed cadres of the National Conference. They did not find it difficult to win over large masses of Muslims to their side.

The Conference cadres in the Kashmir Province and the Muslim majority districts of the Jammu Province, where they exercised strong influence, established local regimes, with the mosques as their operational centres, to suppress opposition. An atmosphere of fear and intimidation was created in almost all the Muslim majority constituencies of the State to terrorise the Muslims, who did not support the Conference, and the Hindus and the other minorities, who were avowedely opposed to it.

As the elections drew near, the Hindus and the Muslims, opposed to the National Conference, beseeched the Indian Government to restore law and order in the State to enable them to participate in the elections freely and without fear. The Prime Minister of India, Morarji Desai as well as the Home Minister, visited the Valley. They were apprised of the state of insecurity that prevailed in the State. Neither Morarji nor Chowdhry Charan Singh, who professed deep commitment to secularism and non-violence, took any serious note of the highly communal and irridentist campaign, the Conference carried on to win the elections. Lakshmi Kant Jha closed himself in the old palace of the Maharaja in Srinagar, which had been converted into the Governor's residence. He played safe and though aware of the turmoil in the State and the intimidation freely used to stiffle the opposition, he made no efforts to take any measures to ensure a fair election.

The National Conference was returned to the Assembly from all the Muslim majority constituencies; thirty-nine in Kashmir, seven in Jammu and one in the Ladakh division. The Congress won elections from 10 constituencies in Jammu and one from Ladakh. The Janata captured 2 seats in Kashmir, both Muslim majority seats, populated by the followers of the Mirwaiz of Kashmir Maulana Farooq, who had headed the pro-Pakistan Action Committee, formed in the aftermath of the sacred relic agitation in 1964, and who had joined Janata Party.

The National Conference, after it had defeated the Congress as well as the janata and rolled to power on the crest of its victory set out to destroy whatever opposition it still faced in the State. The Hindus in the Kashmir Province, who had formed the frontline of resistance against the Front, were openly branded as the: "Agents of India," who sought to enslave the Muslims of the State. The Muslims, who had supported Bakshi and later Gulam Mohammad Sadiq, were accused of having betrayed the Muslims in quest of their freedom and a campaign of widespread persecution was unleashed against them. The Conference government, initiated a process of diverting patronage to the armies of mercenaries the Front had rared, which in due course of time changed the entire structure of the property relations in the State. The new ruling elite was fundamentally communal in outlook and hostile to India.

In 1982, Sheikh Mohammad Abdullah passed away and a new National Conference government was formed by his son Farooq Abdullah. Indeed Sheikh Mohammad Abdullah died of a prolonged illness and the succession struggle in the National Conference was confined to his family. Congress had come back to power in India and another Indian Civil Service officer, Brij Krishan Nehru had replaced Jha. Nehru was evidently instructed by the Congress leadership to arrange for a smooth transfer of power from the father to his son.

Farooq's ascent to power caused a deep cleavage inside the Conference where Gulam Mohammad Shah, Sheikh's son-in-law, contested his claim to the leadership of the party. Shah had actively supported the Plebiscite Front and assumed a powerful position in the National Conference after Sheikh had been restored to power in 1975. Farooq followed a policy of concilliation towards the Central Government, till he consolidated his hold over the government of the State. However, after he had secured himself in power, he turned his back on Indira Gandhi, who had installed him into his office.

The National Conference confronted the Indian Government with a piquant situation, when the State Government insisted upon the enactment of legislation, which Sheikh Mohammad Abdullah had initiated, to enable the Muslims, who had migrated to Pakistan and occupied Kashmir in 1947, to return for resettlement in the State. The Resettlement Bill, embodying the proposed legislation,

lay pending in the State Assembly after the demise of Sheikh Mohammad Abdullah. The Governor decided to send a message to the State Legislature for the reconsideration of the Bill, in view of certain defects in it. The National Conference, in crude defiance of the Governor's instructions, pushed the Bill second time on 4 October 1982, leaving no choice for the Governor except to give his ascent to it.

The Resettlement Bill generated a widespread controversy. The Hindus and the other minorities and a section of the Muslims characterised the Bill as a dangerous move to destablise the situation in the State further by virtually inviting a fresh invasion of the State by Pakistan with the tacit approval of the State Government.

Evidently in the Bill aimed to open the sluece gates for the infiltration of whoever, Pakistan sought to induct into the State. In the occupied territories and in Pakistan thousands of militamen had been raised in the preparation of the crusade for the liberation of the Muslims of the State and several underground intelligence agencies of Pakistan, operated from there to subvert the Indian positions. The later events proved amply that the Resettlement Bill was perhaps, a more convenient way of ensuring the infiltration of arms and men, to militarise the secessionist forces in the State. By now, Pakistan had, after its intervention in Afghanistan, commenced a wider policy of militarising Pan-Islamic fundamentalist movements in South Asia. The consolidation of Pan-Islamic fundamentalism and its militerisation as a global strategy to unify the Muslims into a powerful flank of the Western alliance system against communaims, with Pakistan as one of its focal centres, gave a new direction to the Muslim secessionist movement in the State.

Fresh elections to the State Legislative Assembly were held in 1983. Farooq Abdullah appealed to the Muslims to return him to power to enable him to complete the task of liberating them from their bondage which his father had left unfinished. The appeal went home and the National Conference won the elections from almost all the Muslim majority constituencies of the State. The Congress was returned from 26 constituencies and the Bhartiya Janata Party won 2 Seats.

After the elections Farooq Abdullah launched a tirade against the Congress and the Central Government which he accused of

interfering in the internal affairs of the State to undo its autonomy. The National Conference blamed the Congress leadership of promoting Hindu communalism and charged the Congress of having ignored the interests of the Muslims in India, which had actually led to the dominence of the Hindus on the state and society in India. He blamed the Government of India of having excluded the Muslims of Kashmir from employment in the service of the State, the services of the Government of India, the Indian army and other corporate bodies, which he alleged had sown deep distrust among the Muslims in Kashmir. Soon, the campaign of hatered against the Indian Government was picked up by the rank and file of the National Conference.

In 1984, twelve members of the National Conference Legislature Party defected. Farooq Abdullah advised the Governor to dissolve the Legislative Assembly and called for fresh elections. The Governor refused to accept the advice of the Chief-Minister and invited the leader of the dissident group, Gulam Mohammad Shah to form a new government. Gulam Mohammad Shah garnered the support of the Congress members in the Legislative Assembly to ensure majority support for his government. Farooq Abdullah accused the Indian Government of having engineered his removal to undo the independence of the State.

In 1986, widespread communal violence against the Hindu minorities broke out in south Kashmir. The violence spread rapidly to theother parts of the Valley. Hundreds of residential houses of the Hindus were burnt down and a number of temples either demolished or damaged. The State Government watched the hollocaust with indifference. Jagmohan, the Governor of the State, urged upon the Government of India to take prompt action to retrieve the damage which had been done to the political process in the State. Shah ministry was dismissed in 1986, and a state of emergency was imposed in the State.

The Presidential rule was brought to an end with the conclusion of the Rajiv Gandhi - Farooq Abdullah Accord of 1986, and the restoration of Farooq Abdullah to power. Farooq Abdullah assumed the office of the Chief-Minister on 7 November, 1986. Shortly after, the new government was formed he decided to hold fresh elections in the State. The Natioonal Conference and the Congress resolved to combine in an electoral alliance to contest the elections

jointly.

After the announcement of the elections, the Muslim secessionist organisation joined together to form a common front against the National Conference-Congress combine. The inspiration forthe formation of the Muslim United Front as the alliance of the secessionist organisations was named, came from Pakistan. The secret agencies of Pakistan operating in the State, the Muslim bureaucracy, the Muslim middle class and a section of the Muslim ruling elite, worked hectically to provide a stable base for the Muslim United Front.

In the ensuing electoral contest, the major political issues were relegated to the background and the Muslim United Front and the National Conference vied with each other, to represent, more faithfully, the "genuine aspirations of the Muslims for freedom." While the elections drew near, both the Front and the National Conference, resorted to the use of intimidation and fear to secure their respective positions. The Congress plodded through the muddle without any purpose.

The United Front, however, was not able to muster as much force as the National Conference inducted into the elections. The National Conference exercised considerable influence in a number of Muslim majority constituencies where it outflanked the Front. The leaders of the Front accused the Conference - Congress alliance of having rigged the elections with the help of the administration. The allegations were not wholly false.

By the time, the National Conference-Congress combine was re-installed into office, a widespread network of underground terrorist cells was already formed in the State. The plan to organise an armed rebellion against India, was devised in Pakistan by the secret services of that country. A report, based upon a minute presented by the President of Pakistan General Zia-ul-Haq to his service chiefs in a meeting held in Islamabad, was put in wide circulation in India. The minute called the "Operation Topac," envisaged a plan to :

(*i*) Induct terrorist violence in the State;

(*ii*) Ensure the demobilisationof the Indian security services

(*iii*) Acquire control over the State administrative apparatus;

(*iv*) After the militant violence had spread in the State, push the Muslim masses into an open revolt against India.

Terrorist violence erupted in the State towards the close of 1989. In the first week of January 1990, the militant flanks mounted a massive offensive against the Indian security forces, which had been deployed in the State, following the disintegration of the local police organisation. "The people almost the whole lot of them, believed that Kashmir was going to be either independent or become a part of Pakistan in January 1990 itself.

In fact January 26, was promised by the militants to be a day of supposed deliverance when the new People's Republic of Independent Kashmir was going to be declared and foreign correspondents invited to be witnesses to the birth of the new State. The writ of the Government did not run beyond and generally outside the confines of their own command room circles. The moral of the Police was in their boots and there was a revolt right within Police when the Jammu and Kashmir Armed Police surrounded and held their own senirs to ransom at gun point. Far from going after the extremists, the Police men themselves were aiding and abetting them."

The Government of India, now run by the United Front, a coalation of parties, which had defeated the Congress and pushed it out of power, was suddenly faced with a serious situation in Kashmir. The militants struck deeper when they kidnapped the daughter of the Home Minister of India, Mufti Syed, a Muslim of Kashmir. Rubia Sayeed, was finally rescued, but in return, the Government was compelled to surrender five top terrorists, who were in the custody of the State Government. The Indian Government recalled General Krishan Rao, who had mutely witnessed the turmoil in the State during the short tenure, he remained in office and appointed Jagmohan the Governor of the State. Jagmohan took the oath of his office on 19th January 1990 at Jammu. The National Conference, the Congress and almost all the left parties, erupted alive against his appointment. The National Conference and the Congress leaders, accused the Government of India of having sent Jagmohan to Jammu and Kashmir to bring about the destruction of the Muslims. Jagmohan, they alleged was a sowrn enemy of the Muslims in India. Farooq Abdullah resigned from his office in protest.

A state of emergency was imposed in the State, after the resignationof Farooq Abdullah. The State Assembly was dissolved on February 19, 1990, Jagmohan wrote to the Home Minister : "I have informally sounded the two Advisors and also talked to the Chief Secretary earlier. It is agreed by all that it is necessary to dissolve the Assembly as it is wholly unrealistic in the present circumstances and is a formidable obstacle in normalising the situation." Jagmohan wrote further : "After considering all aspects of the case, I have decided to dissolve the State Assembly forthwith. The order placed below should issue."

The militant violence in the State continued unabated and, since fresh elections to the Assembly could not be conducted, the State continued to be governed under the emergency powers of the President of India, embodied in Article 356 of the Constitution of India. The state of emergency, envisaged by Article 356 of the Constitution of India was imposed on the State, after the Governor's rule under Section 92 of the Constitution of Jammu and Kashmir, ended at the expiry of its six months term.

CONSTITUTIONAL AMENDMENT

The First Amendment to the Constitution of Jammu and Kashmir was enacted to bring the provisions of the Constitution of Jammu and Kashmir, in regard to the appointment, tenure emoluments and the removal of the Judges of the State High Court and the Superintendence and control of the elections in the State, in harmony with the provisions of the Constitution of India. The First Amendment envisaged :

(*i*) The President of India was empowered to make the appointment of Acting Judges and Additional Judges of the High Court of Jammu and Kashmir;

(*ii*) The salaries, leave and allowances of the Judges of the High Court of Jammu and Kashmir were brought at par with salaries, leave and allowances of the Judges of the High Courts in the other Indian States;

(*iii*) The powers vested in the State Legislature to determine the allowances and rights in respect of leave and pension of the Judges of the High Court of the State were abolished;

(*iv*) The State Legislature was divested of the powers to present an address to the President of India for the

removal of Judges of the High Court in Jammu and Kashmir.

The Amendment Act repealed Section 138 of the Constitution of Jammu and Kashmir. TheSection 138 vested the powers to direct and control the elections to the State Assembly, with the *Sadar-i-Riyast* of the State. The Amendment Act vested the powers of the superintendence and control of the elections to the State Legislative Assembly, in the Election Commission of India.

The second Amendment Act was enacted in March 1960. The Amendment Act, modified the Second Schedule of the Constitution of Jammu and Kashmir to bring the emoluments of the Sadar-i-Riyasat at par with the emoluments of the Governors of the other Indian States.

The Third Amendment Act was enacted in march 1961. It extended the period of reservation for the Scheduled Castes in the Legislative Assembly. The Constitution of Jammu and Kashmir fixed the period for which the seats were reserved of the Scheduled Castes, to thirteen years.

The Fourth Constitution Amendment Act was enacted in 1963. The fourth amendment modified the Fourth Schedule of the Constitution of Jammu and kashmir. The necessity to amend the Fourth Schedule arose out of the extension of Article 222 of the Constitution of India to the Jammu and Kashmir State by the Presidential Order of 1960. Article 222 of the Constitution of India provided for the transfer of the Judges of the High Court from one State to another state in India.

The fifth Amendment of the Constitution of Jammu and Kashmir was undertaken by the Fifth Constitution Amendment Act of 1963. The fifth amendment was enacted in October 1963. The fifth amendment deleted the provisions of the Constitution of Jammu and Kashmir embodied in Section 50 in regard to the representation of the teachers in the Legislative Council of the State. Provisions of Section 50 delimited a teachers' constituency for the election of a teachers' representative to the Legislative Council of the State.

The sixth Amendment to the Constitution fo Jammu and Kashmir was undertaken in April 1965, when the Fifth Constitution

Amendment Act was enacted. The Amendment Act abolished the office of the Sadar-i-Riyasat and incorporated provisions for the replacement of the office of the Sadar-i-Riyasat by the office of the Governor. The Governor, the Amendment Act provided would assume the powers and functions of the Head of the State, which till the enactment of the Amendment, were exercised by the Sadar-i-Riyasat. The Amendment Act envisaged :

(*i*) That the Head of the Jammu and Kashmir State would be designated as the Governor; and

(*ii*) The executive power of the State would be exercised by the Governor, directly or through officers subordinate to him.

The Sixth Amendment Act abrogated the provisiosn of the Section 27 of the Constitution of Jammu and Kashmir, which laid down the procedure for the election of the Sadar-i-Riyasat by the Legislative Assembly and his recognition by the President of India. Section 27 was replaced by fresh provisions which laid down that the Governor of the State would be appointed by the President of India under warrant of his seal and signature, in the same manner in which he appointed the Governors of the other Indian States. In accordance with the Amendment Act, any person, who was a citizen of India and had attained the age of thirty-five years, was eligible to be appointed the Governor of the state.

The Amendment Act abrogated the provisions of Section 32 of the Constitution of Jammu and Kashmir, which envisaged the provisions pertaining to the removal of the Sadar-i-Riyasat. Section 32 provided that the Sadar-i-Riyasat could be removed by the President of India on an address presented to him by the Legislative Assembly of the State, after being adopted by a two-third majority of its total members. The Amendment Act abrogated Section 33 as well, which provided for the appointment of an Acting Sadar-i-Riyasat in the eventuality of death, removal or illness of the Sadar-i-Riyasat. Fresh provisions were incorporated in the Amendment Act, which empowered the President of India to make arrangements for the discharge of the functions of the Governor, in contingencies which were not provided for the Constitution.

The Sixth Amendment brought another drastic change in the Government of the State. The Amendment Act abolished the office of the Prime Minister of the State. Section 35 of the Constitution of Jammu and Kashmir was amended to the effect that the Council of Ministers, appointed to aid and advise the Governor of the State was to be headed by a Chief-Minister and constituted of other ministers appointed on his advice.

The Amendment Act introduced changes in the oath of affirmation subscribed by the candidates seeking election to either house of the State Legislature. Section 5 of the Constitution of Jammu and Kashmir was amended to incorporate the provisions which required a candidate for the election to either house of the State Legislature, to subscribe on oath to "bear true faith and allegiance to the Constitution of the State as by law established" and to "uphold the sovereignty and integrity of India." The Amendment Act incorporated provisions in the Constitution of Jammu and Kashmir, which required the members of the two houses of the State Legislature subscribe to an oath, which affirmed that they would "bear true faith and allegiance to the Constitution of the State as by law established." and "uphold the sovereignty and integrity of India."

The Sixth Amendment introduced changes in the constitution of Kashmir in respect of the appointment of the Chief-Justice and the Judges of the High Court. According to the Amendment Act, the powers to appoint the Chief Justice and the other Judges of the High Court were vested with the President of India and the President of India was empowered to appoint the Chief Justice of the High Court of Jammu and Kashmir by warrant under his seal and signature after consultation with the Chief Justice of India and the Governor of the State. The President of India was empowered to appoint the other Judges of the High Court by warrant under his seal and signature after consultation with the Chief Justice of the State. The retirement age of the Judges of the High Court was raised to sixty-two years.

The Amendment Act introduced changes in the provisions of the Constitution in respect of Public Services. Sub Section (2) (3) of Section 126, were repealed and substituted by fresh provisions which imposed two specific restrictions on the powers of the executive to dismiss civil servants :

(*i*) No person, who was a member of the Civil Services of the State, or who held a civil post under the State could be dismissed or removed or demoted except for an inquiry in which he was informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges; and

(*ii*) Where it was proposed, after an inquiry, to impose a penalty on a civil servant or a person, he was to be given a reasonable opportunity of making representation on the proposed penalty, on the basis of the evidence deduced during the inquiry.

The Amendment Act abrogated the temporary and transitional provision of the Constitution fo Jammu and Kashmir, embodied in Sections 148, 149, 150, 151 and 152.

The Seventh Amendment to the Constitution of Jammu and Kashmir, which followed the Sixth Amendment closely, raised the allowances of the Governor of the State.

Fifteenth Amendment to the Constitution of India removed from the perview of the Election Commission of India the power to appoint election tribunals to decide disputes and doubts arising out of elections. The Fifteenth Amendment necessitated a corresponding amendment in the Constitution of Jammu and Kashmir which removed from the perview of the Election Commission of India, the power vested in Section 138 of the Constitution of Jammu and Kashmir. Consequently, in accordance with the Eighth Amendment to the Constitution of Jammu and Kashmir, the power of the Election Commission of India to appoint tribunals to decide disputes pertaining to the elections, were withdrawn.

In October 1967, the Constitution of Jammu and Kashmir was amended again. The Ninth Amendment Act, removed the limitations placed by Section 109 and 111 of the Constitution of Jammu and Kashmir on the appointment, postings and transfer of District Judges. In accordance with the provisions of the Ninth Amendment Act, the powers of posting, leave, promotion of the District Judges and the Judges of the Subordinate Courts was vested with the High Court of the Jammu and Kashmir State. The amendment to Section 109 of Constitution of Jammu and Kashmir validated the jurisdiction exercised by the Judges, decrees, sentences and orders passed

and acts or proceedings undertaken by the District Judges, posted or transfered otherwise than in accordance with the provisions of Section 109 and 111 of the Constitution.

The tenth Amendment to the Constitution of Jammu and Kashmir was made in October 1968. The Tenth Amendment made changes in the Second Schedule of the Constitution of Jammu and Kashmir and empowered the Governor of the State to sanction reappropriation of additions to grants of his allowances.

In october 1970, the Constitution was again amended. The Eleventh Amendment Act, made provisions for the extension of reservations for Schedule Castes in anticipation of the expiry of the period for which the reservations were made. The Eleventh Amendment extended the period of reservation for Scheduled Castes by a further period of ten years.

The Twelfth Amendment to the Constitution of Jammu and Kashmir was enacted in August 1975. The Amendment Act introduced changes in the procedure laid down by the Constitution of Jammu and Kashmir for the division of the State into territorial constituencies and the number of the seats reserved and left vacant for the people residing in the part of the state under the occupation of Pakistan. The Amendment Act laid down that the division of the State into electoral constituencies would be undertaken by an authority, which was appointed under law made by the State Legislature and in such manner as was determined by the State Legislature.

The twelfth Amendment Act amended Section 48 (a) of the Constitution of Jammu and Kashmir, and reduced the number of the seats in the Legislative Assembly, reserved for the people in occupied territories of the Jammu and Kashmir State to twenty-four. The Constitution of Jammu and Kashmir, reserved twentyfive seats in the Legislative Assembly for the people residing in the occupied territories.

Another change the Twelfth Amendment introduced in the Constitution provided for the holding of the elections without fresh delimitation in case such elections were deemed to be necessary. The Amendment Act provided that, in case the Legislative Assembly was ever dissolved before the expiry of its term and after the completion of the census operations, but before the readjustment

of electoral constituencies, the Governor, in case he was satisfied that the election should be held without delay could, after consulting the Election Commission of India, direct that the elections be held in the State, on preceding delimitation of the territorial constituencies.

The Thirteenth Amendment to the Constitution of Jammu and Kashmir, was enacted in August 1975. The Thirteenth Amendment added a provision to Section 142 which provided that nothing could preclude an appeal against the decision of Returning Officer to such authority as the State Legislature may by law, provide.

The Constitution of Jammu and Kashmir Constitution was again amended in March 1976. The Fourteenth Amendment Act made changes in the law relating to the resignation of the members of the State Legislature. The Amendment Act provided that a member of either house of the state Legislature could resign by writing under his hand addressed to the Chairman of the Legislative Council or the Speaker of the Legislative Assembly. After the resignation was accepted, the member was deemed to have resigned from the membership of the house of which he was a member. In such case, where Chairman or the Speaker certified that the resignation was not voluntarily tendered, or it was not genuine, the resignation was not to be accepted by them.

The Fifteenth Amendment to the Constitution of Jammu and Kashmir was enacted in March 1976. The Amendment Act introduced changes in the powers of the Governor to promulgate ordinances during the process of the State Legislature. The Amendment Act provided that the decision to promulgate ordinances would not be subject to the judicial review. No such provisions were incorporated in the Constitution of India. In one respect the Amendment Act vested arbitrary powers in the hands of the Governor. The inclusion of explit provisions in the Constitution of Kashmir, rendered the satisfaction of the Governor into a subjective act, involved, problems of crucial importance. The Governor's powers to promulgate ordinances is, in a Parliamentary government, subject to the principle that the Governor will exercise his powers on the aid and advice of the Council of Ministers. The Fifteenth Amendment vested in the Governor a wide discretion to assume powers and promulgate ordinances, independent of the aid and advice of the Council of Ministers.

During the Emergency, the Constitution of India was amended in 1976. The Forty-Second amendment to the Constitution of India, brought about drastic changes in the Indian government. Consequently the Constitution of Jammu and Kashmir was amended to give effect to the amendments in the State. The Forty-second amendment to the Constitution of India enhanced the term of the House of the People and the Legislative Assemblies in the States to six years. The Sixteenth Amendment modified the provisions of Section 52 of the Constitution of Jammu and Kashmir to the extent that the term of the Legislative Assembly of the State was extended to six years. The Amendment Act, extended the tenure of the sitting Legislative Assembly to six years.

In September 1979, a fresh amendment was made in the Constitution of Jammu and Kashmir to extend the reservation of presentation in the Legislative Assembly for the Scheduled Castes. The seventeenth Amendment to the Constitution of Jammu and Kashmir amended Section 49 of the Constitution of Jammu and Kashmir and the period for which seats were eserved for the Scheduled Castes in the Legisaltive Assembly was extended to thirty years.

BASIC STRUCTURE

The Constitution of Jammu and Kashmir envisaged a parliamentary form of government for th State. The Constitution, however, envisaged many provisions which modified the basic structure of the Parliamentayr government. The Parliamentayr government in the State, therefore differed in several aspects from the Parliamentary government in the other Indian States.

The Constitution of Jammu and Kashmir envisaged a government which formally accepted the dictatorship of the cabinet as a basis of the function of the State government, thus curtailing the extent of its accountability on the one hand and limiting the prerogatives of the governor to act in his discretion, on the other hand. the Constitution of Jammu and Kashmir imposed an explit limitation on the Governor, by virtue of which he was bound to exercise his powers on the aid and advice of the Council of Ministers. The Sadar-i-Riyasat, who headed the State Government for a decade and a half, and who was elected to his office by the State Legislature, was no more than a figurehead. The abolition of

the office of the Sadar-i-Riyasat, who headed the State Government for a decade and a half, and who was elected to his office by the State Legislature, was no more than a figurehead. The abolition of the office of the Sadar-i-Riyasat in 1965, insulated the Governor partially from the influence of his Council of Ministers. But the supremacy of the Cabinet was so firmly established that the Chief Ministers disagreed with the decisions taken by the Governors, which they did not approve.

In 1953, Sheikh Mohammad Abdullah scoffed at the orders of his dismmisal by the Sadar-i-Riyasat, and questioned his authority, mainly because he refused to recognise the priveleges of the head of the state in a parliamentary government. He visualised the powers of the Sadar-i-Riyasat, including the powers to appoint the Ministry and dismiss it, in subjection to the dictates of the Prime Minister, Sheikh Mohammad Abdullah and later Farooq Abdullah, disagreed violently with the Governor on the Resettlement Bill and indeed, B.K. Nehru was considerably contained in the rightful exercise of his legitimate functions. Since the successive Governors, depended on the Central Government for the stability of their tenures, they lacked the courage and the initiative to exercise their functions independently, a fact which in course of time, subverted the entire parliamentary structure of the State government. In 1990, Farooq Abdullah resigned from his office because he did not approve of the appointment of Jagmohan to the office of the Governor of the State. Jagmohan was not able to stay in Kashmir for long and was recalled by the Janata Dal Government in Delhi, because of extra-constitutional pressures brought to bear on it not only from inside the country, but from outside as well.

The State Governors, appointed from time to time, were men of small stature, their outlook warbled with political ambitions, caste prejudices and a distorted sense of self-righteousness. They extolled the isolation of the State from the constitutional organisation of India, as a guarantee to ensure its secular character and its progress towards social justice. They praised the virtue of arbitrary authority which the State Government exercised though it impinged upon the fundamental rights to equality and protection against discrimination on the basis of religion, right to freedom and personal liberty and right to freedom of faith. Bhagwan Sahay and Lakshmi Kant Jha overlooked the distortions in the Parliamentary institutions in the State. Their successors lacked the courage to rectify the

distortions, to ensure an effective enforcement of political responsibility. Bhagwan Sahay, Jha and Nehru, having received their initiation in the British colonial tradition, were unable to rededicate themselves to the services of a free nation, which demanded a will to shoulder responsibility, Jagmohan broke the convention and paid the price.

The political accountability of the State Government, the basis of all parliamentary forms of authority, was also impaired because of the wide authority, the State Government exercised by virtue of Article 370. For a decade the Interim Government ruled the State by decree and ordinance without any constitutional protection against discrimination and arbitrary use of power.

The extension of fundamental rights envisaged by the Constitution of India to Jammu and Kashmir in 1954, was subject to severe restrictions and retained the State Government wide powers of classification which subverted the principles of equality before law and protection against discrimination on the ground of religion and faith. Article 370 retained the State Government arbitrary powers of legislation, intended to limit liberty, freedom, including the freedom of faith, and the right to legal remedies against discrimination, envisaged by the Constitution of India.

The constitutional change brought about by the British in the State and subsequently quickened by the impact of the Indian renaisance and the strugtgle for Indian independence was mainly inspired by the liberalist reformism, the British empire espoused. The Dogra rulers were hostile to the British because, the British had dealt with them, with lesser equanimity than they had treated the other major princess in India. This had promoted Pratap Singh as well as Hari Singh, to use the Indian unrest as a lever to secure them against the British intervention. Pratap Singh, proposed the institution of a Legislative Assembly in 1921, as a part of the political reforms, he intended, to introduce in the State. The proposal was promptly turned down by the British. Hari Singh, institutied the legislative body in 1934, and it was based upon the same principles of separate electorates, reservation and qualified franchise, the British had adopted for reforms in the British Provinces. Hari Singh guarded his privileges and powers, as jeolously as the other Princes did and trailed behind the British to bring about political change in his State.

Along with the other Indian Princes, he too was cast overboard, after the British quit India. His role in the events which followed the British withdrawal and the lapse of Paramountncy, was decisive and ensured the integration of Jammu and Kashmir with India. Evidence has come to surface that he did not do anything that would embarass the Indian leaders, who faced a debacle in Junagarh and were frightened by the active hostility of the Nawab of Hyderabad, the Muslim ruler of a Hindu majority State. The Congress leaders including Gandhi, secretly supported him in delaying a decision on the accession of the State to India. Hari Singh harboured fears that if he acceded to India, Pakistan would use Junagarh and even Hyderabad as powerful factors in a bargain with India, and he did not trust the Congress leaders, who had accepted partition and also the Mountbatten Plan to divide the Princely States on the basis of the partition.

The course of the evolution of the constitutional government was adversely affected by the uncertainty which followed the United Nations intervention in the State, its exclusion from, the Indian constitutional organisation, which ensured unrestricted authority to the State government in the absence of any constitutional safeguards to protect rights to equality, freedom and legal redress and the long secessionist movement, which dominated the political development in the State and led to the communalisation of its government and society. For their own interests, the successive State Governments, including the Interim Governments, subverted secular integration of the people on the basis of th eright to equality, representative government and political responsibility, freedom of choice, and personal liberty. In a political culture, largely unintegrated and dominated by belief systems, identified with secessionism, Pakistan consolidated its support-structures in the State. With the onset of the militant violence, in 1990, the whole structure of its civil government crumbled.

KASHMIR CONSTITUTIONAL HISTORY AND DOCUMENTS

Vol–II
Documents

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50.	Report of the Kashmir Constitutional Reforms Conference.	1932
51.	Report of the Franchise Committee	1933
52.	Regulation I of Samvat 1991, Constitution Act.	1934
53.	Jammu and Kashmir Praja Sabha Election Rules (Extract) Qualifications of Electorates.	
54.	Order to Convene the First Session of the Praja Sabha No. 57, of 26th September, 1934.	
55.	Vernacular names for the Ministers of the State, Order No. 99, 5th October, 1934.	
56.	Appointment of Ministers to Praja Sabha, Order No. 132 13th October, 1934.	
57.	Appointment of Official Members to Praja Sabha, Order No. 133, 13th October, 1934.	

58. Inaugural address of Maharaja Hari Singh to the Praja Sabha 1934.

59. Resolution of the Working Committee of the Indian National Congress, which met from 29th July to Ist August 1935.

60. Presidential Address of Sheikh Mohammad Abdullah to Muslim Conference, 1938.

61. Resolution of the Working Committee, Muslim Coinference June, 28, 1938 (Extract).

62. National Demand, 1938.

63. Resolution of the States People's Conference, Ludhiana Session 1939, on the Treaties of Indian Princes with the Paramount Power.,

64. Pandit Jawaharlal Nehru's remarks on Treaty Rights of the Princes in his Presidential address at Ludhaiana Session, 1939.

65. Jammu and Kashmir Constitution Act 1939.

66. Jammu and Kashmir Praja Sabha Rules of Business and Procedure 1939 (Extract).

67. Board of Judicial Advisors, Procedure rules, 1941 (Extract).

68. Pakistan Resolution of the Lahore Session of the All India Muslim League 22-24 March, 1940.

69. Jinnah's demand for separate home-land, 1940.

70. Broadcast by Sir Stafford Cripps, Delhi 30 March, 1942 (Extract).

71. Statement of Maharaja Hari Singh on Cripps Mission, (Extract).

72. Resolution of the Working Committee of the Indian National Congress, 2nd April, 1942.

73. Resolution of the Working Committee of the All India Muslim League 2nd April, 1942.

74. Resolution of the Unity of India, passed by the All India Congress Committee, 29th April to 2nd May, 1942.

75. From the Marques of Linlithgow to Mr. Amery, May 18, 1942 (Extract).

76. From Maharaja Jamsahib of Nawanagar to Sir H. Craik (Extract) 1942.

77. Cripps Mission, Letter from the Secretary to the Crown

Representative to the India Office, June 25, 1942.

78. Cripps Mission, Request of Chamber of Princes for Statement of Policy by His Majesty's Government Memorandum to Secretary of State for India, Sept 4, 1942.

79. Resolution of the Indian States Delegation 1942.

80. Cripps Mission (Maharaja Jam Sahib of Nawanagar to Sir S. Cripps) Sept. 10, 1942.

81. Naya Kashmir - The Constitution of the State (Extract).

82. Jinnah's address to Muslims of Jammu and Kashmir, July 24, 1944 (Extract).

83. Resolution of the Working Committee of the Indian National Congress, on united India and self-determination, September, 1945.

84. Resolution of the Working Committee of National Conference, February 10, 1946.

86. Dyarchy, Appointment of Popular Ministers.

87. Dyarchy - Mirza Afzal Beg to Rai Bahadur Ram Chander Kak, Prime Minister, Jammu, letter No. 11-P/46/D.O dated 15-1-1946.

88. Rai Bahadur R.C. Kak to Mirza Afzal Beg, No. 16-cc/46/ D.O. dated 12-2-1946.

89. Mirza Afzal Beg tgo Rai Bahadur R.C. Kak, Feb. 27, 1946.

90. Rai Bahadur R.C. Kak to Mirza Afzal Beg, letter No. 25-cc/D.O. dated 14th March, 1946.

91. Mirza Afzal Beg to the Prime Minister, 17th March, 1946.

92. Rai Bahadur R.C. Kak to Mirza Afzal Beg March 17, 1946.

93. Mirza Afzal Beg to Rai Bahadur R.C. Kak dated 18th March, 1946.

94. Rai Bahadur R.C. Kak to Mirza Afzal Beg, No. 31-cc/ D.O. dated 19th March, 1946.

95. Dyarchy-Statement of Sheikh Mohammad Abdullah.

96. Statement of Sheikh Mohammad Abdullah on the Ministerial crisis in Kashmir, April 22, 1946.

97. Resolution of the Working Committee, All Jammu and Kashmir National Conference January 17, 1946 on the Treaty Rights claimed by the Princes.

98. Statement of Sheikh Mohammad Abdulllah on Indian States,

1946 (Extract).

99. Presidential Address, Kashmir Kisan Conference, May 11, 1946 (Extract).

100. Quit Kashmir-speech of Sheikh Mohammad Abdullah May 26, 1946 (Extract).

101. Telegram from Provincial National Conference Committee Jammu to the Viceroy and Maharaja of Kashmir-20th June, 1946.

102. Statement of Sheikh Mohammad Abdullah before the Sessions Court Srinagar (Extract).

103. Resolution, Congress Working Committee on Kashmir, 21st November, 1946.

104. Statement of Mir Waiz Moulvi Yosuf Shah on Congress Working Committee, Resolution 25th Sept, 1946.

105. Press statement, Choudhary Hamidullah Khan, President Jammu and Kashmir Muslim Conference, 10th May, 1947 (Extract).

106. Statement of Acharya Kriplani, Congress President at Mujahid Manzil, Srinagar, 21st May, 1947.

107. Resolution of the Congress Working Committee on States, 15th June, 1947.

108. Resolution of the Kisan Mazdoor Conference, Sept. 5, 1947 (Extract).

109. Resolution of Kashmir Socialist Party, Sept., 18, 1947 (Extract).

110. Kashmir Standstill Agreement 1947.

111. Telegram from Foreign Secretary Government of Pakistan, Karachi, to the Prime Minister of Jammu and Kashmir, 15th August, 1947.

112. Maharaja's Accession offer to India, Text of letter dated Oct. 26, 1947 from Sri Hari Singh to Lord Mountbatten.

113. Instrument of Accession of Jammu and Kashmir State, 26th October, 1947.

114. Acceptance of Instrument of Accession of Jammu and Kashmir State.

115. From Lord Mountbatten to Maharaja Sir Hari Singh 27th October, 1947.

116. Chief Secretariat (General Department) Emergency Administration Order, No. 176-H of 1947, dated 30th October, 1947.
117. Emergency Council-Members.
118. Proclamation of Shriman Inder Mohinder, Rajrajeshwar Maharajadhiraj Shree Hari Singh, Ruler of Jammu and Kashmir and dependencies, 5th March, 1948.
119. Proclamation, Government Gazette, Dated Samvat. 7th Har 2006/9th June, 1949.
120. Resolution of the National Conference, 1950.
121. Text of the Proclamation issued by the Head of the Jammu and Kashmir State, 1 May, 1951.
122. Speech of Honourable Sheikh Mohammad Abdullah in the Constituent Assembly (Extract).
123. An Act further to Amend the Jammu and Kashmir Constitution Act, 1996, Act. No. XVII of 2008.
124. Memorandum submitted by Shri Chgeewang Rigzin, President Buddhist Association, Ladakh to the Prime Minister of India on behalf of the people of Ladakh.
125. Interim Report of the Basic Principles Committee of the Constituent Assembly of the State, 1952 (Third Session 10th June, 1952).
126. Resolution moved by Durga Prasad Dhar in the Constituent Assembly of the State 1952 (Third Session 12th June, 1952).
127. Resolution of the Constituent Assembly pertaining to the Head of the State, 1952.
128. Report of the Derafting Committee 1952 (Fourth Session 20th August, 1952).
129. Bill to Amend the Constitution Act 1996.
130. Sheikh Mohammad Abdullah, Statement to the Constitutient Assembly on Delhi Agreement, 11th August, 1952 (Extract).
131. Joint Memorandum submitted by Cabinet Members of the Sheikh Mohammad Abdullah's Ministry to the Sadar-i-Riyasat, 8th August, 1953.
132. Sadar-i-Riyasat's letter to Sheikh Mohammad Abdullah Karan Mahal, Srinagar, August 9, 1953.
133. Order Issued by the Sadar-i-Riyasat on August 8, 1953.

134. Sadar-i-Riyasat's letter to Bakshi Ghulam Mohammad.
135. Bakshi Ghulam Mohammad's reply to Sadar-i-Riyasat's letter, Srinagar, August 9, 1953.
136. Report of the Basic Principles Committee Constituent Assembly of the State, 1954.
137. Report of the Committee on Citizenship and Fundamental Rights, Relating to Citizenship and Fundamental Rights, Constituent Assembly, 1954.
138. Report of the Drafting Committee, Constituent Assembly of the State.
139. The Jammu and Kashmir Constitution (Amendment) Act, 1955 (Extract).
140. The Constitution of Jammu and Kashmir, 1956 (Extract).
141. Sheikh Mohammad Abdullah to Maulana Azad 16 July 1953.
142. Sheikh Mohammad Abdullah's Statement in Kashmir Conspiracy Case, 1961.
143. Kashmir Political Conference Programme, 1965.
144. Tashkent Declaration
145. Shimla Agreement.
146. Kashmir Accord between Indira Gandhi Prime Minister of India and Sheikh Mohammad Abdullah, 1975.
147. Kashmir Accord, S.M. Abdullah to Indira Gandhi, 1975.
148. Kashmir Accord, Indira Gandhi to Sheikh Mohammad Abdullah, 1975.
149. Kashmir Accord, Mirza Afzal Beg to G. Parthasarthy, 1975.
150. Kashmir Accord, G. Parthasarthy to Mirza Afzal Beg. 1974.
151. Solemn Pledge, Jammu and Kashmir Liberation Front 1979–80.
152. Telegram Maulana Sayeed Masoodi to Morarji Desai Prime Minister, 1977.
153. Statement of Prem Nath Bazaz on Elections in 1977.
154. B.K. Nehru to Dr. Farooq Abdullah, 27 January 1984.
155. Letter Presented to Governor Jagmohan by 12 Members of Legislative Assembly, 1984.
156. Wireless Message from Jagmohan to President of India, the Prime Minister and the Vice-President, 1984.

157. Jagmohan to Farooq Abdullah, 1984.
158. Farooq Abdullah to Jagmohan, 1984.
159. Farooq Abdullah to Jagmohan, 7 July 1984.
160. Jagmohan to Editor Times of India 22 August 1984.
161. Jagmohan to Rajiv Gandhi, 12 February 1985.
162. Proclamation of Emergency, 1990.
163. Dissolution of Assembly, Jagmohan to Home Minister, 1990.
164. Report Ved Marvah and Jamil Qureshi, 1990.
165. White Paper on Kashmir, Joint Human Rights Committee, 1995.
166. Memorandum of Joint Human Rights Committee to Dr. Karan Singh Committee on Autonomy of Kashmir, 1995.
167. Constitution (Application to Jammu and Kashmir) Orders.

1. Treaty of Amritsar.

Treaty between the British Government on the one part and Maharaja Gulab Singh of Jammu on the other concluded on the part of the British Government by Frederick Currie, Esquire, and Brevet-Major Henry Montgomery Lawrence, acting under the order of the Right Honourable Sir Henry Hardinge, G.C.B., one of Her Britannic Majesty's Most Honourable Privy Council, Governor-General of the possessions of the East India Company, to direct and control all their affairs in the East Indies and by Maharaja Gulab Singh in person.

ARTICLE I

The British Government transfers and makes over, for ever, in independent possession, to Maharaja Gulab Singh and heirs male of his body, all the hilly or mountainous country, with its dependencies situated to the Eastward of the river Indus and Westward of the river Ravi, including Chamba and excluding Lahol, being part of the territories ceded to the British Government by the Lahore State according to the provisions of Article IV of the Treaty of Lahore dated 9th March, 1846 A.D.

ARTICLE II

The Eastern boundry of the tract transferred by the foregoing Article to Maharaja Gulab Singh shall be laid down by Commissioners appointed by the British Government and Maharaja Gulab Singh respectively for that purpose and shall be defined in a separate engagement after survey.

ARTICLE III

In consideration of the transfer made to him and his heirs by the provisions of the foregoing Articles, Maharaja Gulab Singh will pay to the British Government the sum of seventy-five lakhs of rupees (Nanakshahi), fifty lakhs to be paid on ratification of this Treaty and twenty-five lakhs on or before the 1st october of the corrent year, 1846. A. D.

ARTICLE IV

The limits of the territories of Maharaja Gulab Singh shall not be at any time changed without the concurrence of the British Government.

ARTICLE V

Maharaja Gulab Singh will refer to the Arbitration of the British Government any disputes or questions that may arise between himself and the Government of Lahore or any other neighbouring State and will abide by the decision of the British Government.

ARTICLE VI

Maharaja Gulab Singh engages for himself and his heirs to join with the whole of his military forces, the British troops when employed in the hills or in the territories adjoining his possessions.

ARTICLE VII

Maharaja Gulab Singh engages never to take or retain in his service any British subject nor the subject of any European or American State without the consent of the British Government.

ARTICLE VIII

Maharaja Gulab Singh engages to respect, in regard to the territory transferred to him, the provisions of the Articles V, VI and VII of the separate engagement between the British Government and the Lahore Darbar, dated 11th March 1846 A. D.

ARTICLE IX

The British Government will give its aid to Maharaja Gulab Singh in protecting his territories from external enemies.

ARTICLE X

Maharaja Gulab Singh acknowledges the supremacy of the British Government and will in token of such supremacy present annually to the British Government one horse, twelve perfect shawl goats of approved breed (six male and six female) and three pairs of Kashmiri Shawls.

This Treaty consisting of the above Articles has been this day settled by Frederic Currie Esq. and Brevet Major Henry Montgomery Lawrence, acting under the directions of the Right Honourable Sir Henry Hardinge, G. C. B, Governor-General, on the part of the British Government, and by Maharaja Gulab Singh in person and the said Treaty has been this day ratified by the seal of the Right Honourable Sir Henry Hardinge, G. C. B, Governor-General.

Done at Amritsar this sixteenth day of March in the year of our Lord, 1846, corresponding with the seventeenth day Rabi-ul-Awwal 1264 Hijri.

Maharaja Gulab Singh (signed) H. Hardinge (Seal)

(Signed) F. Currie

(Signed) H.M. Lawrence

By order of the Right Honourable the Government of India

(Signed) F. Currie.

Secretary to the Government of India with the Governor-General.

2. Governor-General to Gulab Singh, January 7, 1848.
(Extract)

Your Highness is aware of the principle by which the British Government is guided in its treaties with Eastern Princies where cessions of territory are involved that whilst it will scrupulously fulfil all its obligations for the protection of its ally, it never can consent to incur the reproach of becoming indirectly isntrument of the oppression of the people committed to the Prince's charge.

If the aversion of the people to a Prince's rule should by his injustice become so miserable as to cause the people to seek his downfall, the British Government are bound by no obligation to force the people to submit to a ruler who has derived himself of their allegiance by his misconduct.

In no case, will the British Government be the blind instrument of a Ruler's injustice towards his people and if inspite of friendly warnings, the evil of which the British Government may have just cause to complain be not corrected, a system of direct interference must be resorted to which as Your Highness must be aware would lower the dignity and curtail the independence of the Ruler.

3. Lawarance to Jawala Sahai, January 14, 1852.
(Extract)

On account of certain excesses committed by some European Visitors in the past year, I intend to appoint some responsible European official at Srinagar to stay there till the return of the said visitors in order that he may put a stop to the occurance of such excesses. As the Maharaja is well acquainted with the good intentions and sociability of Major Mac Gregor, I wish he may be allowed to stay at Srinagar till the end of the hot season to supervise the conduct of European visitors to Kashmir. As this arrangement is also for the benfit of High Highness, it is hoped that it will be gladly accepted by High

Highness.

4. Governor-General to Gulab Singh, September 26, 1873.
(Extract)

In view of the important position of Your Highness's territories on the north-western frontiers of British India, the increasing importance attached to political affairs in Central Asia, the necessity of obtaining early and reliable information of all that takes place beyond the Himalayan passes, the mischief caused by the circulation of false and exaggerated rumours from those quarters, and the close relations which will, His Excellency in Council trusts, be established with Yarkand, it appears to His Excellency in Council to be advisible that a British Resident should remain permanently at the Court of Your Highness. This alteration of the present arrangements is made for reasons relating to the external relations of British India, and the Viceroy has no intention of interfering more than heretofore in the internal affairs of Kashmere.

5. Officer on special duty to Foreign Secretary, December 9, 1882.

(Extract)

It may not be worth while to alter the designation of the Officer on Special Duty, though his present designation is cumbrous and absurd. His duties are not special but the ordinary duties of an Agent or a 'Charged' Affairs'.....But there is no magic in the word 'Resident'. Whatever the Maharaja may think, and I am not aware that the powers of a Resident as such are anywhere strictly defined, they would probably vary with the degree of control exercised by the Paramount power. I myself am of the opinion that 'Agent to the Governor-General' would be more appropriate designa-

tion and one less likely to terrify the Maharaja and as High Highness has a Vakil or Agent with the Governor-General, he would hardly be astonished that the Governor-General should have a Vakil or Agent with him. No matter what the Officer is called, his position should be strengthened, in justice to him and to the Darbar.

6. Government of India to the Secretary of State for India, April 7, 1884.

(Extract)

The three principal facts which it is necessary to notice are that the death of the Maharaja Ranbir Singh is apparantely near at hand; that the administration of the Kashmir State is so thoroughly disorganised as to threaten a complete break-down; and that the heir-apparent to the Chiefship is said to be unfitted in character and habits to govern the State. The first two of these facts we have unfortunately been in a position to anticipate for a long time past. The Maharaja has been suffering for years from a moral disease; while the recent famine afforded convincing proof of the corruptness and inefficiency of the administration of Kashmir. We have also heard from time to time unsatisfactory accounts of the heir-apparent, and it has of late been reported that his father entertained some idea of setting him aside by a testamentary disposition. In our judgment, the time has now come for determining the course which the British Government should adopt on the death of the Maharaja; and we therefore proceed to lay our views before your Lordship.

Turning first to the question of the succession to the present Chief, we are of opinion that the eldest son, Mian Pertab Singh, should be proclaimed at once when his father die. We do not consider that we can take congizance of the vices attributed to Pertab Singh unless they have reduced him to a condition of actual incapacity which does not appear to be the case; nor do we think that in this matter we should be justified in attaching any weight even to the wishes of His Highness

Ranbir Singh. For the general interests of peace and good order among the Native States, no encouragement should be given to the idea that an eldest son can be set aside at the will of his father; and we hold that in practice nothing but the clearest evidence of actual incapacity to rule should be allowed to stand in the way of a regular succession by order of primogeniture. Further we are entirely opposed to permitting any partition of the Kashmir State, by will or otherwise, among the three sons of the present Chief. Feeling confident that our opinion upon these points are in accord with established policy, we have anticipated your Lordship's orders by issuing the instructions necessary for the guidance of Lieutenent-Colonel Sir Oliver St. John, K.B.C.I., the Officer on special Duty, in case of an emergency arising. In the meanwhile we do not think it desirable formally to announce to the Maharaja that a will affecting the succession could not be recognised, because this course might raise upleasant discussions. But the Officer on Special Duty will avail himself of any good opportunity for intimating to His Highness that such a will would not be expedient.

On the succession of the new Chief, it will not, in our opinion, be proper to postpone any longer representation of our views upon the necessity for introducing substantial reforms into the administration of Kashmir. The misgovernment to which the people of that country have long been subjected was some time since prominently brought to our notice by Mr. Henvey. We did not take action at once, conceiving that a more favourable opportunity would present itself on the occurence of a fresh succession-an event which seemed unlikely to be long postponed. When that event takes place,we consider that it will be our duty to impress upon the Kashmir Government its obligations to its own subjects, and to see that the reforms which are so urgently needed are no longer postponed. With this view we would propose, immediately on the occurence of the next succession, to inform the Maharaja, that we regard the present state of affairs as most unsatisfactory and that substantial reforms are required. We would if possible lead the new Government to propose the measures necessary to give effect to this altered policy, but we should require that their

execution should be entrusted to competent hands. While firmly insisting upon the necessity for a change, we should avoid any direct interference with administrative details.

We are, however, sensible that, if our advice is to be effectual, it may be necessary to alter the present arrangment under which our representative remains in the Maharaja's territory for a portion only of the year. Such a change would probably be welcomed by the people of Kashmir; and as it would not be introduced until after the death of Maharaja Ranbir Singh, his feelings in the matter would be fully respected. It is a measure which may be called for, not merely by the need for assisting and supervising administrative reforms, but also by the increasing importance to the Government of India of watching events beyond the North-Western frontier of Kashmir. Any disturbances which continued misgovernment might create in Kashmir, would be actually felt on the frontiers of Afghanistan; the connection between Kashmir and its dependent Chiefships would in all probability be served; and grave political complications might easily ensue. We have therefore to consider the necessity for providing for efficient political supervision, not merely in the interests of the people of Kashmir, but also in the interests of the people of India. Under these circumstances we are anxious to obtain from Her Majesty's Government authority to appoint, if it should appear to us necessary, at any time after the death of the present Maharaja, a Resident political officer, who will exercise a general supervision over the affairs of the Kashmir State. We do not propose that this officer if appointed by us, should hold any actual position in the government of the State, nor do we think that it would be necessary to give him special powers in the province of Kashmir. It will suffice if he occupies, with regard to Jammu and Kashmir, the position and powers ordinarily given to a British Resident in a feudatory State.

The British Government are not debarred by any engagement express or tacit, from posting a political Officer permanently in Kashmir; and we see no reason why an arrangement which has been accepted without demur by such a State as Hyderabad should not be adopted in regard to the Kashmir State. If this view is correct, the only question which arises is,

whether existing circumstances do not render it desirable to give us the authority we seek.

7. The Secretary to State for India to the Government of India, May 23, 1884.

(Extract)

(2) In anticipation of the death of Maharaja Ranbir Singh which is believed to be near at hand, your Excellency in Council has had under consideration (1) the course to be adopted in regard to the succession; (2) the measures which should be taken on the commencement of a new reign, in order to secure reforms in the administration of the State; and (3) the expediency of a change in the existing arrangements for the representation of the British Government at the Maharaja's Court.

(3) Your Excellency in Council is of opinion that any attempt on the part of the Maharaja to exclude his eldest son from the succession should be discouraged, and that Mian Pertab singh should be proclaimed immediately on his father's death; you propose to require from the new ruler substantial reforms in the administration, and to insist upon their execution being entrusted to competent hands; and you request from Her Majesty's Government discretionary authority to appoint, at any time after the death of Maharaja Ranbir Singh, a British Resident in Kashmir, with the position and powers ordinarily given to such an officer in a feudatory State.

(4) While I regret to receive so unfavourable an account of the character of the Maharaja's heir, I agree with your Government in regarding as inexpendient any deviation in the case Excellency's of Kashmir from the regular succession by order of primogeniture, or any partition of the State, by will or otherwise, amoung the three sons of the present Chief. I approve therefore, of the instructions in accordance with this view, which I understand to have been sent to the Officer on Special Duty in Kashmir.

(5) As to the urgent need of reforms in the administration of

the State, there is, unfortunately, no room for doubt. It may, indeed, be a question whether, having regard to the circumstances under which the sovereignty of the Country was entrustd to the present Hindu ruling family, the intervention of the British Government on behalf of the Muhamadan population has not already been too long delayed; but, however this may be, Her Majesty's Government are satisfied that, upon a fresh succession, no time, should be lost in taking whatever steps may be requisite in order to place the administration upon a sound footing.

(6) The same occasion would, in the opinion of Her Majesty's Government, be a suitable one for introducing a change in the present arrangement under which your Excellency's representative remains in Kashmir for a portion only of the year.

(7) In 1846 it was decided not to appoint a political officer to reside permanenlty at the Maharaja's Court, whilst in 1873, when the measure was recommended by Lord Northbrook's Government, the necessity for it did not seem to Her Majesty's Government to be so clearly established as to justify them in disregarding objections which were expressed by authorities entitled to respect. But in the interval which has since elapsed, circumstances have greatly changed; and whether regard be had to the condition of the country, to the character of the Prince into whose hands the Government will shortly pass, or to the course of events beyond the course of events beyond the border, which has materially increased the political importance of Kashmir, the appointment which you request a discretionery authority to make appears to be not only desirable but necessary. Your Excellency in Council is, therefore, at liberty to proceed in the matter as you may think proper at any time after the death of Maharaja Ranbir Singh, taking care meanwhile that strict secrecy is observed as to your intentions.

8. Secretary of State to the Government of India, August 1, 1884.

(Extract)

In case of Maharaja Ranbir Singh's death, his eldest son, Mian Pertab Singh, will succeed to the undivided Chiefship the new Maharaja will be called upon to introduce such reforms as many seem to be necessary; and a Resident Political Officer will be stationed in Kashmir. It remains to inform you of the precise steps which the Governor-General in Council desires you to adopt for carring out these arrangements.

So long as Maharaja Ranbir Singh is alive, the Government of India do not propose to make any change in their exiting policy. His Highness should be quietly dissuaded, if he refers to you on the subject, from executing any testament in favour of the partition of his territories; but it will not be necessary for you to make any formal communication to His Highness upon this matter; or to travel beyond existing practice in recommending to him administrative reforms,or other desirable measures. You should abstain from any allusions to the subject of changes in the existing position of the officer on special Duty in Kashmir, and you should avoid as much as possible anything which is calculated in the Maharaja's present state of health unnecessarily to disturb his mind. It is of course desirable that you should use your influence, as far as you can, even during the life of the Maharaja, for the improvement of the condition of Kashmir; but the Governor-General in council wishes to treat His Highness with the utmost consideration and, as any substantial reform would probably involve a very unpalatable degree of interference with his proceeding, it will be sufficient if, during the remainder of his life, you can perserve the administration of the State from any material change for the worse.

If at any time Maharaja's death should appear to be very near at hand, you should make arrangements to join His Highness at Jammu, or wherever he may then be, and to prevent any disorder occurring. If his illness should unfortunately terminate fatally, you should take the earliest opportunity of announ-

cing that the Viceroy is pleased to recognize the succession of Mian Pertab Singh to the Chiefship, and you should formally install the new Chief on the gadi of Jammu and Kashmir.

At the same time you should inform His Highness, and the members of his Durbar, of the views and intentions of the British Government in regard to the future administration of the State. You should give them clearly to understand that His Excellency the Viceroy regards the existing conditions of affairs in Kashmir as most unsatisfactory; and you should warn His Highness and those about him that substantial reforms must be introduced without delay. You should then announce that, with the view of aiding His Highness in the introduction and maintenance of those reforms, the Viceroy has decided to give His Highness the assistance of a resident English officer, and that for the future the British representative in Kahmir will have the same status and duties as the Political Residents in othes Indian States in subordinate alliance with the British Government.

It is important, in order to avoid uncertainty and the risk of disorder, that this announcement of the intentions of the Government should take place without delay, and that they should clearly and fully understood both by the Maharaja and by all others concerned when he is installed. The reognition and installation of the new Chief should be as prompt and formal as posssible, and nothing should be omitted that can have the effect of assuring His Highness of the good-will of the British Government, but, while treating the Maharaja with utmost friendliness and courtesy, you cannot speak too plainly in regard to the Viceroy's views and intentions.

Immediately after the news of Maharaja Ranbir Singh's death reaches the Government of India, a letter addressed by His Excellency the Viceroy to the new chief will be sent to you for delivery. A draft of this letter is enclosed for your information. When you receive the signed copy of this draft or before you recive it, if the ceremonies connected with the change of rulers should afford you an opportunity of speaking earlier, you should invite the Maharaja to indicate the reforms which he may consider it necessary or desirable to introduce; and you should ask His Highness to inform you of his views

with regard to the persons whom he would propose to place in charge of the administration. It will not be expedient to bring in a Minister from elsewhere if a sufficiently well qualified local candidate can be found; and as far as possible the Governor-General in Council would wish to leave the Maharaja free to form own Government. Any proposals, therefore, which His Highness may put forward on this subject will be tentativly accepted, unless you should see decided reason to object to them as holding out no prospect of success.

You will notice that the draft letter to the Maharaja impresses upon him the necessity for consulting you fully at all times, and following your advice. You should therefore not hesitat to offer your advice freely whenever you may think it desirable to do so; the more particularly because owing to the peçuliar conditions under which the Maharaja will succeed to the Chiefship, it will be necessary that his administration should for a time at least be closely supervised; the condition of Kashmir must be thoroughly reformed, and the Governor-General in Council cannot allow this object to be frustrated by any obstruction or procrastination on the part of the Durbar.

I am now to enumerate, for your information and guidance, the principal measures of reform which appear to the Governor-General in Council to be necessary after any arrangements required for the immediate alleviation of distress, if distress exist, have been adopted and carried out. In the opinion of the Governor-General in Council those measures are: the introduction of a reasonably light assessment of land revenue, collections being made in cash if on examination this seems to be a suitable arrangement; the construction of good roads; the cessation of State monopolies; the revision of existing taxes and dues, especially transit dues and the numerous taxes upon trades and professions; the abolition of the system of farming the revenue, wherever the system is in force; the appointment of respectable officials, if such exist, and their regular payment in coin; the removal of all restrictions upon emigration; the reorganization and regular payment of the army; and the improvement of the judicial administration. In order to afford the Maharaja all possible help in the introduct-

ion of such reforms, the Governor-General in Council will if necessary grant High Highness a loan from Imperial revenues, and will also be willing to place at his disposal, for a time, the services of any officers of the British Government who may seem specially qualified to assist the new administation in carrying out the measures contemplated. Such assistance seems to be more particulary required with regard to the revision of the settlement and the construction of roads. The pay of any officers transferred must, however, be found by the Kashmir State.

With reference to the relations existing between Kashmir and the State upon her northern border, the Governor-General in Council does not think it necessary at present to issue any detailed instructions. The question is an important one, and will require your close and constant attention. You should be kept accurately informed of all movements of troops and other noteworthy occurances in the direction of the frontier, and you should be prepared to advise Maharaja Pratap Singh freely on all matters of frontier policy. But at present the Governor-General in Council has no special instruction to give you on this subject.

9. Kharita from the Viceroy to the Maharaja of Jammu & Kashmir, September 14, 1885.

(Extract)

I have received with deep regret the news of the death of of your father, Maharaja Ranbir Singh and I wish to assure you without delay of my most sincere sympathy.

Maharaja Ranbir Singh rendered valuable service to the British Government. I feel that his loss is the loss of a friend and I wish that it had not fallen to me, during the period of my Viceroyalty, to consider the measures rendered necessary by this unfortunate event.

It is now my duty to inform you, on behalf of the Queen Empress of India that I recognise and confirm your succession to the Chiefship of Jammu and Kashmir. I trust that your

Highness's life may be long and prosperous; and that, in all difficulties, of whatsoever kind, you will rely with confidence upon the good-will of the British Government, which will never fail you so long as you are loyal to the Crown and earnest in the desire to rule your State with justice and moderation.

Your Highness has before you a difficult task. During the illness of your father the administration of the State became seriously disorganised and it will be necessary for you to introduce many reforms. But my agent, Sir Oliver St. John, will remain with you and help you to the utmost of his ability; and I feel confident that with his aid all your difficulties will be successfully met and overcome. I request your Highness to refer to him for a more detailed explanation of my views regarding the future administration of the Kashmir State; and I hope that your Highness will not fail to consult him freely at all times, and to be guided by his advice in carrying those views into execution.

10. Resident in Kashmir to Secretary to the Government of India, September 16, 1885.

(Extract)

I have the honour to report my arrival here yesterday morning, my journey having been much delayed by the bad state of the road. At Verinag, late at night on the 12th, I received a telegram from Mian Pertab Singh, the heir-apparent, informing me of the death of his father, Maharaja Ranbir Singh at 4.30 p.m. that day.

x x x

The state of affairs seem to be somewhat as follows :—

The death of Wazir Punnu (who fell down dead in Durbar on the 6th instant) was a stroke of extraordinary good fortune for the opposite party, represented by Diwan Anant Ram and

Babu Nilambar. It not only removed their most powerful adversary, and the man who had the greatest influence with the present as with the late Maharaja, but it also keeps the country quiet without any effort on their part. The name of Punnu was a byeword and a reproach among the people, and all the tyranny and oppression from which they suffered was invariably laid to his door, not always with justice. Had he survived his old master, he would have been the leading spirit in the Councils of the new Chief, and the people, hopeless of improvement, would probably have made rebellious demonstrations, which with an army eighteen months in arrears of pay, would not have been easy to suppress. But Punnu died six days before Pertab Singh succeeded to thc Chiefship, and the people, overjoyed at their deliverance from the man whom they believed their sole tyrant, are probably indifferent to the change of rulers, and will remain quite in confident anticipation of early relief from their burdens.

Another fortunate circumstance for the new Chief is the general prosperity of the country, as far as it can be prosperous under such a Government. The late spring rains caused some loss in the low country and the outer hills, as did the summer floods in Kashmir, but the agricultural out-turn for the last year has everywhere been exceptionally high, and the prospects of the crops now in the ground are excellent. Commerce is shown by the Punjab trade reports to be steadily improving inspite of the vexatious restrictions placed on it. Thus, as far as the country itself is concerned, Maharaja Partab Singh and his councillors have everything in their favour. At present he is looking for advice to Babu Nilambar and Diwan Anant Ram. The first is clever and well-intentioned but deficient in force of character. The Diwan is perhaps well meaning, but his bringing up inclines him to lean to the old way of managing the country, and he is weak and cunning. They are, I fear, wholly unable to cope with the difficulties which will meet them in improving the administration, should they make any real effort to do so. Certain simple reforms, such the abolition of abnoxious imports and export dues and the more regular payment of officials, they may effect, but it will, I fear, be hopeless to look for any serious improvemnt in the

administration generally, without constant and heavy pressure, and material interference in details

A probably early source of trouble will be the influence possessed over the new Maharaja by his personal followers. These, who are mostly men of the lowest class, are already beginning to assert themselves, and to offer to help their friends to lucrative employment. It can hardly belong before they and the party of Nilambar and Anant Ram come into conflict. The later will not have the courage to lean on the Resident, and govern as Salar Jang did in Hyderabad in spite of the Chief, but will try to trim with the usual consequences. On these points I will write more fully as the situation develops itself. For the present I have only pointed out to Anant Ram and Nilambar the urgent necessity for paying the troops and for relieving the export trade of the country from its burdens. They will not, or cannot give me any information of the actual state of the finance, except that the public treasury is practically empty. I have every reason to believe, however, that the late Maharaja regularly diverted the revenue of certain districts to his private chest. Some of this was devoted to religious purposes, but popular report has it that he has left large sums hoarded in obscure forts in different parts of the country. It is also said that he solemnly enjoined that this money should never be used to meet the current expenditure of the State, and no doubt, if it exists, every effort will be made to keep it in tact, or at all events to spend it on no useful object. The annual customs contract expires in the course of a month or two, and this will be a favourable opportunity for a revision of the tarrif, which should entirely free the woollen and metal trades of Kashmir from the heavy export duties to which they are now subject. This will give an impulse to production in Srinagar, which should tide the artisan class over the winter, of which the prospects are exceptionally bad owing to the final collapse of the shawl trade in Europe, and the paucity of visitors in the valley this year.

11. From Partab Singh to the Viceroy, Sept. 18, 1885.
(Extract)

I have also to present my greatful thanks to your Excellency for the most welcome message conveyed to me on the 15th instant by Colonel Sir Oliver St. John, the Officer on special Duty in Kashmir, that your Excellency has been pleased to recognise my succession to the gadi of this State, and I hope by the blessing of God to let Your Excellency have the satisfaction of learning before long that I am as fully alive to the undoubted and immense importance of conscientiously discharging my duties towards my subjects by doing all in my power to secure their best happiness, as I am awake to the supremely important duty of giving renewed proofs of loyalty to the British Government by following in the footsteps of my father and grandfather.

I do not hesitate to admit that the existing state of affairs in Kashmir and Jammu urgently requires immediate introduction of substantial reforms into the administration of the country, and now that I have power commensurate with my responsibilities, I beg to assure your Excellency that nothing shall be spared on my part, and no time will be lost to prove beyond any possibility of doubt that it is my ambition to succeed in making my country a model of a well-governed State in alliance with the Government of India.

It has, however, pained me extremely to learn that exactly at the time when I have made up my mind to deserve and win your Excellency's approbation and encouragement by proving myself equal to the onerous and responsible duties of a good ruler, your Excellency has been thinking of changing the status of the British officer on special Duty in Kashmir to that of a political Resident, and thus lowering me in the eyes of my subjects and in the estimation of the public. It is fully known to your Excellency that I have only just now acquired the power of showing to the world that, without any interference from any quarter or any,the smallest diminution of long-enjoyed rights and dignity of this State, I am able and willing of my own accord to introduce and maintain such reforms as are calculated to entitle a rulers to the lasting gratitude of

his subjects, and encouraging approbation of the paramount power as well as the public at large.

12. Durbar Proclamation, September 25, 1885.

(Extract)

(1) The custom of "khodkasht'. This is a system by which the State farms a part of the village lands itself. Advances are annually made to the persons employed for the purpose, but it is notorious that they embezzle the money, and cultivate the land with forced labour, and seed extorted from the villagers.

(2) The custom of "leri". This is a system of paying sepoys and others by remission of rent, instead of in coin and, for some reason not easily explained, is much disliked.

(3) Each group of ten houses in Jammu territory will no longer as before, be obliged to supply one Sepoy or other Government servant; forcible enlistment generally is abolished; and the role of obliging families to provide substitutes for deserters in done away with.

(4) The customs duty on rice and other provisions brought into Srinagar for sale is reduced from two annas in the rupee to half an anna, in other words from 12 1/2 to 3 1/8 per cent.

To understand the severity of this tax it must be explained that Government itself is the principal grain dealer, and fixes a permanent rate at which grain is sold. Thus the rate for unhusked rice in Re. 1-4(English) per kharwar, equivalent to about 10 annas a man. If a Zemindar sends rice to market, he can ask no more for it than 10 annas a man, and has in addition to pay the customs contractor 1 1/4 anna before he can offer it for sale. Under these conditions it is clear that the remission of three-fourths of this tax will benefit the producer, and not the consumer, who will pay the same price for his rice as before.

(5) The next impost remitted is also in favour of Zeminder. Every large village community in Kashmir comprises a "Zillahdar," or "Harkara," whose business it is to report the misdeeds of his fellows. The Durbar affect to look on these officials as rural police; but as they are occasionally women, and have no

powers beyond reporting, spies would be a better name for them. They are paid by a cess of 1 1/2 per cent on the gross produce of the land. Some years ago it occurred to Wazir Punna that the Zillahdars were making too much money, and he therefore made their chief, the Harkara-Bashi (head-bringer of news) pay an annual sum to the treasury. This has been raised till it now amounts to 60,000 Chilki rupees (37,500 English) a great deal more than the estimated total value of the cess from which it is supposed to be paid. This most obnoxious impost is now abolished,but the Zillahdars are warned that they must continue to send in reports, and that if found extorting any thing beyond the legitimate 1 1/2 per cent they will be punished.

(6) The tax on the sale of horses in Kashmir, called "Zari-nakas", which at one time amounted to 50 per cent of the purchase money, is abolished.

(7) The tax on "Ekhas" playing for hire to Sailkot, which amounted to Re. 1-11 on a total of Rs. 2-10 annas is abolished, and some other minor dues are remitted.

13. Partab Singh's Address in Durbar, September 25, 1885.

SIR OLIVER ST. JOHN, SARDARS AND GENTLEMEN.

(1) My hearty and cordial thanks are due to his Excellency the Viceroy, and his worthy representative and my sincere friend, Sir Oliver St. John, for the kharita recognising my succession to the Chiefship of this large and important State, and I take this fitting opportunity to declare publicly, that of the many ardous and responsible duties which I shall have to perform as the rular of this State, the foremost under all circumstances will be the duty of following in the footsteps of my illustrious grand father and the lamented Highness, in giving substantial proofs of unswerving and devoted loyalty to Her Imperial Majesty's Government, and, when the necessity will arise, of placing all the resources of my country at the disposal of His Excellency the Viceroy and of personally joining the British army with the whole of my military force.

(2) Next in importance to my obligations to the paramount power, but next to those only, will be the duty of governing my country with justice and moderation. The responsibilities which I am going to undertake will be high and heavy indeed, but I believe God will grant me firmness and strength enough to discharge them with credit to the family of my renowned ancestors, and benefit to the lakhs of subjects whom it has pleased providence to place under my care.

(3) I have before me the difficult task of introducing substantial reforms in the administration of the country, but I believe I have only to look the difficulties boldly in the face and show a determined front, to achieve complete success and earn the reputation of a just and good ruler. Armed with purity of intentions and firmness of purpose, I may reasonably entertain the hope of being able to clear the administrative agency of all corruption and incompetency, and impart to it the maximum of honesty and efficiency. I now warn my officials of all ranks that I have fully made up my mind to put down corruption and intrigue wherever they may be found, and I hope they will do all in their power to help me in making administration a blessing and a source of unmixed good to my people.

(4) I know that the paramount power as well as the public will watch with interest the progress and development of my measures of reform, and I am fully alive to the fact that they will estimate me not by the pomp and splendour of my court and retinue, but by the amount of happines; that I may secure to my subjects.

(5) I need not trouble you now with minute details of what I intend to do, but I think I can declare without committing myself to any particular measure the policy and the general principles that will guide me in the conduct of my affairs. I shall adopt such measure only as are calculted to secure to my subjects their greatest good and the fullest enjoyment of their rights and previleges, and shall conduct my administration so that the tiller of the soil will enjoy a fair share of the produce of his labour and the manufacturer of his skill and industry, that every facility will be given to commerce by improving the means of communication and removing unnecessary and vexatious restrictions, that every encouragement will be offered to get all the resources of the country properly developed, that

adequate measures will be taken to give my subjects the benefits of sound and useful education, that ample provision will be made for the relief of the sick and the suffering, and that real merit and worth in my subjects will be recognised and fostered without any distinction of race or rank, creed or colour.

14. Government of India to the Secretary of State for India, October 19, 1885.

(Extract)

The demise of the late Maharaja Ranbir Singh was announced to your Lordship by telegram on the 12th September and the papers now enclosed will acquaint Her Majesty's Government with the steps we have taken to carry out the policy approved by Lord Kimberley's despatch, dated the 23rd May, 1884. The succesion of Pertab Singh, the eldest son of the deceased Maharaja, to the undivided Chiefship of Jammu and Kashmir has been recognised and confirmed. The position of political officer in Kashmir has been placed on the same footing with that of Residents in other Indian States in subordinate alliance with the Government. The attention of the new ruler has been drawn to certain measures of reforms which we consider essential to remedy the longstanding misrule in His High ness's territories. At the same time Maharaja has been assured that we desire to leave the initiation of these measures in his hands, to abstain from unnecessary interference in his affairs, and to allow him all legitimate discretion and a liberal period of time for the execution of a work which is as difficult as it is necessary.

15. The Indian Mirror, October 5, 1886

The settelment of the Anglo-Indian-Cashmere means, in our opinion, the practical annexation of that State to the British Empire and as the presence of the Bangal is is not very favourable to the quiet development of this scheme of annexa-

tion, their immediate departure and future exclusion from that State have really become a necessity of the situation.....we do not know how far the Maharaja is to blame in respect to this affairs. Our own apprehension is that much pressure has been brought to bear on His Highness to compel the resignation of the Bengali officer in his State. These Bengalis are always a thorn on the side of the foreign office and the officers of the political department.....and as the foreign office is evidently revolving some plans in regard to Kashmir that will not bear exposure to light, the removal of the Bengalis from position of influence in the State, necessarily considered the first step towards the accomplishment without disagreable friction. The death of the old Maharaja was most unfortunate at this moment, and as the present ruling Prince very greatly needs advice and guidance, the reported exodus of the Bengalis from Cashmere is the more to be regretted.....In course of time, too as Cashmere is to be shortly connected with British India by an extension of our Railways system. The Govt. may think fit to remove its summer residence from Simla to the "Happy Valley." For no better place can possibly be selected for the purpose... It has been a veritable Naboths Vine Yeard, at which our Govt. has always been casting wistful eyes, longingly and lingeringly, and now under the plea of guarding India from Russian invasion, it is sought to colonise that territory with Anglo-Indians as a preliminary step, we believe, to its absolute annexation afterwards. The settlement of Kashmir with Anglo- Indians cannot fail to be followed up with the almost immediate absorption of the State.....We pity the lot of poor Cashmere and its Maharaja, and the present policy of Lord Dufferin in regard to that State is very much to be condemned. Lord Dufferin may imagine or plead, as we found him to do in regard to upper Burma, that he is justified by grave political reasons but such repeated acts of high-handedness will, we are afraid, lead to serious and unexpected disasters in the end. The Russian progress towards India may be put forward as an excuse for the present policy in connection with Cashmere, and, in trying to avert or remove danger, immediate peril is courted.

16. Report on the affairs of the State of Jammu and Kashmir by the Resident in Kashmir, March 5, 1888 :

(Extract)

I have had more opportunities of studying the Maharaja's character than perhaps any other officer in the country. My intercourse withhim, official, private, and social, has been frequent; my relations with him have been always friendly. there has never been any friction or tension between us. He has never failed in prsonal courtesy to me, nor ever refused to see me at any time or on any occasion; therefore I can fairly say that I am not actuated by any feelings of personal dislike towards His Highness.

I think, however, that the Government of India should be under no illusion as regards Maharaja Pertap Singh. From first to last I have failed to discover in him any sustained capacity for governing his country, or any genuine desire to ameliorate its condition, or to introduce those reforms which he has acknowledged to be necessary. More than two years have passed since his accession, but not only has he achieved nothing, but he has opposed beneficial measures proposed by others. The progress made has been in spite of him. I do not believe he is loyal, but fortunately he is powerless to carry his country with him. And I am convinced that the Government will commit a serious mistake if it believes that the reforms which the country urgently needs will ever be effected by Maharaja Pertap Singh. He will never, of his own free will, establish a capable and honest administration; nor, if any power of interference is left him, will he permit any administration appointed by the Government of India to carry on the business of the country. He will thwart and oppose it in every way he dares; the only restraint will be the limit of his powers and his fears; therefore I do not earnestly advise that the Maharaja be made plainly to understand that he has had his chance, and that he will not be allowed any longer to stand in the way. I would assign him a liberal income, to be placed at his absolute disposal, and treat him with full honour as titular Chief, but I would exclude him from all real power. He may reign, but not govern. A great danger with the

Maharaja is that his notorious weakness of character and purpose render him and easy tool in the hands of an unscrupulous adviser, and therefore it is essential that he should be controlled by some agency upon which the Government of India can place confidence. I consider that a reduction of the Maharaja's authority on these lines is an essential condition precedent to all other necessary measures.

Next, as to the form of Government. One plan is to appoint Raja Amar Singh Prime Minister, on condition of his undertaking to carry out in all respects the policy of the Government of India. He has not got sufficient experience or solidity of characrer to execute a task of this magnitude without the aid of a resolute and experienced adviser, and it would be necessary to constitute some such office as "Secretary to Government", and to nominate to it a suitable British Officer-Native or European. I have great doubts whether Raja Amar Singh can be trusted, and, unless he has strong officer at his elbow to keep him straight, I do not think it would be safe to employ him. He has never forgotten his father's intentions on his behalf, and the object he is working for is to become Maharaja of Kashmir. Once he gets power into his own hands he will use it without scruple to attain this end. At present the Maharaja is friendly to Raja Amar Singh, because he wishes to break the bond which unites the two younger brothers and Diwan Lachman Das, but there is no genuine affection or confidence between them; and the well-known fact that the Late Maharaja would have liked to supersede Partab Singh in favour of his youngest brother, is a special cause of jealousy. And I should expect that, after a short time, all the influence which the Maharaja possesses, especially Zenana influence, would be brought to bear agaiast Amar Singh. Another probable result of his elevation would be a feud between him and his brother Ram Singh, thereby raising against him another hostile party.

Another plan is to bring in a Prime Minister from elsewhere. There is no one in the Maharaja's employ fit for the post, and the selection would need particular care. The situation is this: no Native could administer the affairs of Jammu and Kashmir unless he is not only the exceptionally strong character but also exceptionally honest; and, in any case he

would require besides the full support of the Government of India. If a weak man is chosen he will succumb to local intrigue, notwithstanding all the support which the Government may give him; and, if he is not honest, he will yield to the temptations with which the place abounds, and go with the swim. But, if a Native Minister is brought in from outside, I recommend precautionary measures being adopted with the Young Rajas. I should order each of them to take up his residence in his own Jagir, and so occupy the same position as Raja Moti Singh of Punch. It is not right that these young men should be given large jagirs which they never visit. It ought to be a condition of the grant that they reside on their property and be personally responsible for its administration. They might pay yearly visits to Jammu just as Moti Singh does. Another good result of this measure would be to lay the foundation of class such as exist in the Rajput States. As long as Raja Ram Singh continues to command the State Army there is no hope of any serious-reorganisation; and if Raja Amar Singh were to remain at Jammu, he would not leave a stone unturned to render the Prime Minister's posltion untenable.

A third plan is to continue the existing Council, Making the Resident its temporary head and strengthening it by the addition of two selected Natives. An administration so constituted would probably be strong enough to introduce all needful reforms, and to set the country in order. Three years would suffice to set things stright, and the Resident might then withdraw from the headship of the Council, and an administration be established on ordinary Native lines.

I believe that, sooner or later, the Government will have to choose one or other of these three plans or some modifications of them. But, whatever plan is adopted, there is one measure which must under any circumstances be prescribed. This is, first, the immediate removal of the band of incompetenit corrupt, and mischievous men who are at the bottom of most of the intrigues by which this unfortunate State is torn; and, secondly, the appointment of an adequate number of trained native officials on reasonable salaries who can be trusted, to carry out the orders given to them. Until the entire Kashmir establishment has been recast, and honest and competent

servants substituted for the fraudulent and incapable men now employed, no reforms can be carried out, nor can any mere alteration of the Government be of any use.

17. Kharita from Partab Singh to the Viceroy, April 13, 1888.

Your Excellency is already aware that circumstances obliged me to dismiss Diwan Lachman Das, Prime Minister and President of the Council. As I think that the Council which was formed with your kind advice should be continued, I have prepared a scheme for its reorganisation which I beg to forward herewith to your Excellency.

I beg to express the high consideration and esteem I entertain for your Excellency and to subscribe myself, etc.

JAMMU & KASHMIR COUNCIL CONSTITUTION

(1) The Council shall consist of a President, Vice-President, three members, and a Secretary.

(2) His Highness the Maharaja shall be the President.

(3) Highness shall appoint a Vice-President, Members and a Secretary.

(4) Three shall form a quorum.

(5) The Vice-President, Members, and the Secretary may be removed and substituted by majority of votes of the Members of the Council, for reasons to be recorded.

(6) The Council shall be a consultative one.

APPOINTMENT OF MEMBERS

(7) The Raja Amar Singh is hereby appointed Vice-President and Raja Ram Singh and Babu Nilambar Mukerji Members, with Diwan Janki Prasad, Member and Secretary.

(8) The Members shall represent the following branches of administration:

(i) Military—Raja Ram Singh.

(ii) Judicial and Foreign Department-Raja Amar Singh.
(iii) Revenue—Babu Nilambar Mukerji.
(iv) Miscellaneous—Diwan Janki Prasad.

9. The Vice-President shall also be the Prime Mlnister with executive powers.

10. The Vice-President and Members shall take the following oath :—

"I solemnly declare that in giving my opinion as a Member of Council, I shall keep in view the best interests of the State, and shall freely express my honest convictions, without fear or favour, and I shall not divulge any secrets of the State."

BUSINESS

11. The Council shall sit three days in the week, authorised holidays excepted, and any extraordinary meeting shall be held, on the requisition of the Prime Minister.

12. It shall be the duty of the Council to legislate and hear and pass opinion on all subjects that may be brought forward by the Members.

13. The Council shall, on meeting, frame rules for its guidance, which may be removed or modified by it only.

14. All matters shall be decided on majority of votes.

15. Besides the matters which may be brought forward in the Council by the Members, the Prime Minister, who is the head of the Executive Government under His Highness, may refer to the Council for opinion all important questions affecting the administration in all its branches.

16. The respective opinions of the several Members shall be recorded and signed.

17. When a Member brings forward, or the Prime Minister refers, any special matter to the Council, it shall be the duty of the Secretary to furnish all the members with a written statement of the subject matter.

18. The office establishment shall be considered and settled by the Council on meeting.

18. From the Secretary to Government of India to the Resident in Kashmir, July 25, 1888.

(Extract)

The Government of India have decided to accept in principal the scheme which His Highness has put forward, and your own alternative proposals have for the present been set aside. In coming to this conclusion the Governor-General in Council has not overlooked the fact that the Maharaja's Scheme is open to many objections and that partly on account of His Highness's personal character and partly for other reasons, it is not unlikely to prove a failure. But before sanctioning any measures which would have the effect, directly or indirectly, of taking all power out of the Maharaja's hand, the Govenment of India have felt that it would be just and right to allow the Maharaja a further opportunity of showing whether he is competent to discharge the duties of a responsible ruler. If after full and fair trial it becomes evident that he is wholly incapable of conducting the administration of the State the proposals which you have submitted will be reconsidered.

In the meantime I am to ask you to afford the Maharaja every assistance in your power with regard to the reorganisation of his Council and all other matter upon which he may consult you. The Governor-General in Council does not desire you to press upon him your own views as to these matters. You should understand that the responsibility for the success or failure of the present experiment will rest upon the Maharaja; and your aim should be to meet his wishes in every possible mander, not refusing your advice when His Highness asks for it, but avoiding any course of action which might prevent him from feeling that the Government of India desire to allow him the fullest opportunity of proving his fitness. You should help His Highness as much as possible in doing this, but you should not insist upon the advantage of any measure which he disapproves, however desirable it may seem to be in his own interests.

You will notice that the Government of India have declined to petmit the employment of Babu Nilambar Mukerji as member of Council in charge of the revenue administration.

If the Maharaja should raise the question of employing him in any other capacity, you may inform His Highness that the Government of India do not consider it desirable that the Babu should return to Kashmir. With reference to the question of principle where the Maharaja is at liberty to employ Native British subjects without the consene of the British Government, you should give His Highness to understand that the interpretation of the treaty of 1846 with regard to this point is no longer open to discussion. The Government of India desire to give the Maharaja all possible assistance, and he will always find them willing to place at his disposal the services of competent British Officials; but they must maintain their right to be consulted before any British subjects receive employment within the State.

The enclosed kharita points out to the Maharaja the urgent necessity for a thorough examination in to the condition of the Kashmir finances. This is evidently a point of the greatest importance, and you should use your influence to bring it to the special notice of His Highness and his advisers.

19. Kharita from the Viceroy to Maharja Partab Singh, July 25, 1888.

I have received your Highness's letter of the 13th of April, informing me of the dismissal of Diwan Lachman Das, and forwarding, for my consideration, a scheme which you have prepared for the re-organisation of your Council.

Your Highness's letter has received my most careful attention, and I have now to inform you of the conclusions at which I have arrived with regard to the very important questions which you have been good enough to refer to me.

In the first place, I cannot avoid informing your Highness that the news of the sudden removal of Diwan Lachman Das was received by me with some surprise. Your Highness appointed him to your council after consulting me, and I hoped that your Highness would, before making another change of Government, give me some previous intimation of your views. However, this point has already been brought to your notice

by Mr. Plowden and I do not now desire to dwell upon it any further.

With regard to your Highness's scheme for the future administration of Kashmir, I would ask you to consider the following observations.

Your Highness proposes that the administration should be conducted or assisted by a council consisting of a President, a Vice-President, three other members, and a secretary. The presidency you would retain in your own hands. You would appoint your brother Raja Amar Singh to be Vice-President, and you would also make him Prime Minister with executive powers. The other three members of the Council would be Raja Ram Singh, Babu Nilambar Mukerji, and Diwan Janki Prasad ; and they would be charged respectively with the control of affairs in the military, revenue, and miscellaneous departments. The Prime Minister would have special charge of the judicial and foreign departments. Diwan Janki Prasad would be Secretary in addition to his other duties. It is proposed that the Council should be consultative.

It appears to me that a Government constituted in this manner is open to some criticism. In the first place, I am inclined to doubt whether it is altogether in accordance with your Highness's dignity to be President of the Council. Secondly, your Highness's brothers are still young, and have had little opportunity of acquiring practical experience in administrative work. Babu Nilambar Mukerji has no knowledge of revenue matters, and is altogether unfit to take charge of so important a department of the administration. Of Diwan Janki Prasad I know little, but I understand that he is not a man of marked character and ability. Under these circumstances your Highness's scheme does not appear to me to hold out any certain promise of success.

Nevertheless, I do not desire to raise any objection to the principle of the proposed arrangements. I regard your Highness as the responsible ruler of the State, and I wish to meet your views as far as possible, and to afford you every assistance in carrying them out. If, therefore, your Highness prefers to maintain a Council and to assume the presidency yourself. I am ready to assent to your views in this matter, and also with regard to the nomination of your brothers and Diwan Janki

Prasad. On one point only I feel that in your Highness's interests I must ask you to modify your proposals. I cannot think that the appointment of Babu Nilambar Mukerji as Revenue Minister would be desirable. I am of opinion that for the charge of revenue affairs your Highness should secure the services of some thoroughly competent of official with practical experience of administration. I also think that at least one other official of similar qualifications should be appointed to direct, either as member of Council or in some capacity, the judicial and executive branches of your Government. If your Highness can name any Native Officials in the British Service who seem to me to possess the requisite qualifications I shall be glad to place them at your disposal. If your Highness cannot suggest any names I shall be ready and willing to make inquiries, and to supply you with the best men available either in the Punjab or elsewhere. I have learnt with pleasure that your Highness has already asked for the services of some four or five officers to be employed in the accounts and forest departments. But your Highness's government seems to require something more than the loan of a few subordinate officials. What is wanted is that you should associate with your principal officers two or three thoroughly trained and capable persons, who will be able to give your Highness effective aid in directing and controlling the main branches of the administration. I trust that your Highness will consider these suggestions and will take such steps as may have the effect of strengthening your government from an administrative point of view. I need hardly add that, with regard to this question and to all other questions of importance. Your Highness should freely consult the Resident, who will give you every assistance in his power.

In making these observations I do not overlook the fact, that, since the appointment of the Council of which Diwan Lachman Das was a member, considerable progress has been made in the direction of reforms useful work has been done with regard to the revenue administration, and in the reorganization of the Public Works and Medical Departments. But much remains to be done, and it is because I am deeply conscious of the importance of the Kashmir State, and of the responsibilities of the British Government in regard to it, that I

have so carefully examined the proposals which your Highness has put forward.

I would particularly urge upon your Highness's attention the necessity for a careful investigation into the condition of your Highness's finances, and of the executive and judicial services. Until these are placed upon a thoroughly sound footing it will be impossible to hope for any material increase in the prosperity of the State.

20. Government of India to the Secretary of State, August 18, 1888.

(Extract)

In March last Mr. Plowden thought the time had come when for the sake of the State, it was essential to effect some reduction of the Maharaja's authority. There is no doubt some justification for Mr. Plowden's estimate of His Highness's capacity to rule ; but on the other hand, the condition of the State does not seem to demand at present such decided action as Mr. Plowden has suggested. We have, therefore, determined not to resort to measures which would have the effect, directly or indirectly, of taking the power out of the Maharaja's hands, and His Highness will now have another opportunity of showing under favourable circumstances whether he is capable of carrying on the administration.

21. Secretary of State of the Government of India, October 12, 1888.

(Extract)

I have perused with deep interest the papers regarding Kashmir affairs which accompanied your Excellency's letter of the 18th August, 1888. From them I learn that the instability of the several administrations to which Maharaja Partab Singh had entrusted the management of the affairs of his State since his accession in 1885 has much retarded the execution of

the various reforms which have been repeatedly pressed on the attention of the Maharaja, and that, after the abrupt dismissal of the president of the Council, Diwan Lachman Das, in March last, by the Maharaja, His Highness submitted for the consideration of your Excellency a scheme for the reconstitution of the State Council, in which the Maharaja proposed to assume the post of the President.

2. Though this scheme of administration is open to many objections, partly on account of the Maharaja's personal character, and for the other reasons, and is not unlikely to prove a failure your Excellency's Government have determined to allow His Highness a further opportunity of showing whether he is competent to discharge the duties of a responsible ruler.

3. Judging from the reports of the Residents in Kashmir. I can have little expectation myself that the experiment of a Council presided over by the Maharaja will be successful; but, on the other hand, the objections to any radical change in the government of the province at the present juncture are such that I am willing to sanction your proposal to give the Maharaja another occasion of proving whether His Highness possesses either the capacity or the will to introduce and carry into effect those administrative measures which are essential to the prosperity and security of the Kashmir State.

22. From Resident to Sir H.M. Durand February 27, 1889., *(Extract)*

The day before yesterday I had placed in my hands such reliable evidence as I have said invariably to those who have talked to me, would alone satisfy me of the disloyalty or utter inbecility of the present Ruler of Jammu.

This consists of a batch of thirty-four letters in the Maharaja's own handwriting, some of which are so compromising as to leave, I submit, no course open save his removal from the State, unless the alternative theory be accepted of his being a half-witted individual, irresponsible for his own acts.

Of their authenticity I have, myself, no doubt, and they are admitted to be in the Maharaja's own handwriting by his

brother Raja Amar Singh; besides, a mass of letters like this are not likely to be forgeries in the way one or to might be.

But, side by side with these treasonable letters in this packet there are others in an utterly foolish strain, thereby confirming me in the conclusion I have unwillingly come to that, though with lucid intervals of good sense and propriety, the Maharaja is utterly incapable of being left in charge of his own affairs. The gist of these other letters is that the Maharaja offers large sums of money to certain individuals on condition that they will murder or cause to be removed, Plowden, the late Resident, his own two brothers, Ram Singh and Amar Singh, and one of the Maharanis, who, for some reason, is personally objectionable to him.

The conclusions the letters lead me to are confirmed by certain rather extraordinary acts of the Maharaja in appointing unworthy and incapable persons to important offices of the State, even since I took over charge, without consulting the proper counsellor, or, in fact, any one at all. The thing is the Maharaja is a timid and very superstitious man at the entire mercy of a set of unscrupulous scoundrels who take advantage of his fears and imbecility to pluder the State to any extent, and there appear to me weighty reasons for advising the practical setting aside of the Maharaja's authority.

It surely is politically dangeruos to leave the actual administration of this great State in the hands of an individual who may play us false at any moment, without, perhaps appreciating the disaster that would follow, and, I believe, any steps Government may take short of annexation will be right and necessary, and generally approved by the Princes and Chiefs of India.

Under the circumstances stated I think it is necessary for me to come to Calcutta at once on hearing from you, to talk the matter fully over with you, so that you may be in a position definitely to settle the future policy of Government towards the State.

23. Irshad of Maharaja Partab Singh, Edict of Abdication, March 8, 1889.

My dear brother Raja Amar Singh,

In the interests of the State' and for better administration of the country, and with a view to remodel it, as near as possible, on the English system, I hereby authorise a Council the members of which, for period of five years, will conduct all the public affairs of the State as they think best. The members will be as follows:-

Raja Ram Singh and Raja Amar Singh,

An English member, specially selected by the Government of India on a salary Rs.2,000 or 3,000 per month.

Rai Bahadur Suraj Kaul and Rai Bahadur Bhag Ram.

This Council will have full and sole powers in all the public Departments of the State for a period of five years.

In the event of a vacancy occurring among the three last members during the prescribed period of five years the Government of India will be asked to nominate a new member.

After the expiration of the said period of five years the Maharaja will have the power of reorganising the administration if he finds it necessary to do so.

This period of five years will count from the date of this edict.

The Council will not interfere in any way with the private affairs of the Maharaja.

The Maharaja will continue to draw his monthly allowance for his privy purse as hitherto, no change whatever being made.

The jagirs and other grants of immoveable, movable propert hitherto made by the Maharaja will hold good and the Council will not interfere.

All usual expenses connected with marriages and other family customs will be provided by the State.

Of my two brothers I will myself appoint one as President of the Council.

During the said period of five years the Maharaja will not interfere and will have no voice in the administration of the public affairs of the State, but he will continue to enjoy the honorary rights and position of Maharaja.

The Council have no power to alter existing treaties without the previous approval of the Maharaja. The Council will have no power to assign jagirs or immovable property of the State or to make new rules on such subjects without the consent of the Maharaja.

Signed and sealed by His Highness the Maharaja

Seal of the "State". On 27th Bhagan, 1945,—8th March, 1889

24. From Resident to Sir H.M. Durand, March 13, 1889.

(Extract)

I send you the original edict (with translation) and the official letter handed to me by the Maharaja of Kashmir containing His Highness application to be relieved of the management for a time of State affairs in order to redeem the past.

I trust this voluntary offer on his part may afford, with perhaps further conditions, an acceptable way out of no doubt a very acute difficulty.

As the Government of India have carefully refrained as long as was possible from any sort of interference in the direct management in the affairs of the Kashmir State, so I think now a direct appeal to do so cannot be ignored, and that there should be no hesitation in adopting the best and most complete measure likely to bring about the reforms necessary.

25. Instructions from the Government of India to the Resident in Kashmir, April 1, 1889.

(Extract)

I am to request you to inform the Maharaja that for a time at least he will be expected to refrain from all interference in the Administration. He will retain his rank and dignity as Chief of the State; but full powers of government will be vested in a Council consisting of the Maharaja's brothers and three or four officials selected by the Government of India.

It is not thought desirable that one of these officials should be an Englishman. The President of the Council will be Raja Amar Singh. Besides, retaining his rank and dignity the Maharaja will receive from the revenues of the State an annual sum sufficient to maintain his household in due comfort, and to defray any expenditure which may rightly devolve upon him; but he will have no power of allienating the State revenues, and the sum placed at his disposal, though adequate, must not be extravagantly large.

I am further to request you to make the Maharaja and the Members of the Council thoroughly understand that, although the Council will have full powers of administration, they will be expected to exercise those powers under the guidance of the Resident. They will take no steps of importance without cousulting him, and they will follow his advice whenever it may be offered.

In communicating to the Maharaja and others concerned the decision of the Government of India, you should be careful to avoid basing that decision exclusively either upon the letters or upon the Maharaja's resignation. The letters are repudiated by the Maharaja and as I have said before they are not of a very novel character; while on thc other hand the Government of India are by no means prepared to make the present settlement a matter of compact with the Maharaja, and to accept all the conditions laid down by his edict of the 8th March, for example the five year's limit. You should therefore base the decision of the Government upon a full consideration of all the circumstances, the letters and the Maharaja's wish to retire from the control of affairs being considered amongst other things, but only as portions of a difficult and complicated case, which it has been necessary to settle on broader grounds of general policy.

You should now proceed to work out fresh proposals upon the lines I have indicated. It will be necessary in the first place to define exactly the future position of the Maharaja, the amount of his annual allowance, the expenses which it is intended to cover, the extent of his powers over his own house hold, and generally the conditions which he will have to conform. It will also be necessary to show the proposed constitution of the Council the duties falling upon each of its mem-

bers, and the method of transacting business. You should also ascertain the requirements of the State in the manner of subordinate officials, and should submit for the approval of the Government your views as to the steps to be taken for reorganising the administrative services. Informing those views you should remember that the Government of India has no desire to turn Kashmir into the semblance of a British district, or to place all administrative posts in the hands of Panjabi foreigners. The want of good native officials makes it necessary to import some trained men from the outside, but the men so imported should be kept as low as possible, and your object should be to form with their help a class of Kashmiri officials who will be capable hereafter of administering the State themselves. It is altogether against the wishes of the Government to interfere unnecessarily with the customs and traditions of a Native State, or to force upon it the precise methods of administration obtaining in British territory. Administrative efficiency is not the only object to be attained in such case, nor, indeed the principal object.

26. From the Resident in Kashmir to Raja Amar Singh, Prime Minister, Kashmir, April 17, 1889.

(Extract)

With reference to your No. 159, dated 8th March, 1889, I beg to inform you that the letter with its enclosures was laid before his Excellency the Viceroy and Governor-General in Council, who, after full consideration of the circumstances and the general condition of affairs in the Kashmir State for a long time past, has ordered me to inform His Highness the Maharaja that for a time at least he will be expected to refrain from all interference in the administration. He will retain his rank and dignity as Chief of the State, but full powers of Government will be vested in a Council consisting of the Maharaja's brothers and three or four officials selected by the Goverment of India. It is not thought desirable that one of these officials should be an Englishman. Besides retaining his rank and dignity, the Maharaja will receive from the revenues

of the State an annual sum sufficient to maintain his household in due comfort and to defray any expenditure that may rightly devolve upon him, but he will have no power of alienating the State revenues, and the sum placed at his disposal though adequate, will not be extravagantly large.

His Highness the Maharaja and the Members of Council should thoroughly understand that, although the Council will have full powers of administration, they will be expected to exercise those powers under the guidance of the British Resident. They will take no step of importance without consulting him, and they will follow his advice whenever it may be offered.

Such are the orders of the Government of India, and, on my own part, I beg you will assure His Highness that it will be my endeavour to assist in carrying them out in the way I trust that may be most conductive to the happiness and benefit of His Highness and the State.

27. Lord Lansdowne to Maharaja of Kashmir, Letter from William Digby to London Times, September 7, 1889.

Lord Lansdowne has recently done an exceedingly kindly thing in a characteristically pleasing way. What he has done will stand him in good stead as Viceroy of India. Nowhere in the world does a generous deed meet with so much appreciation as in India. Evidently moved by the many circumstances, pathetic and otherwise connected with the virtual deposition of the Maharaja of Kashmir, Lord Lansdowne, I am informed, has granted permission to the Maharaja to see him. This kindness has raised great hopes in the heart of the Maharaja and in the minds of his supporters. They argue, it is thought on good grounds, that the Viceroy would never have suggested the interview it is declared the suggetion came from above—unless he was prepared to do justice to the Maharaja as His Highness understands that phrase. If Lord Lansdowne does not intend to restore Partab to his throne and reinstate him with the authority taken from him a few months ago, the kindness will prove to have been a mistake;

the resulting disappointment will be most keen. It is not possible to overstate the excitement, which has been caused throughout India by the Maharaja's deposition. Nothing that has happened in the Empire during the past thirty years has so vitally stirred Indians of all races, in every grade of society-this, too, in feudatory States and British districts alike. For the sake of peace and good-will in India and for better government and the increased security of our rule, it is earnestly to be hoped that a return to the status quo in Kashmir is contemplated by Lord Lansdowne and will shortly be arranged.

Lord Lansdowne, if-with such guarantees as the Maharaja has expressed his willingness to give for the good government of the people of Kashmir—he were to restore Partab Singh to his throne, would do not merely a kindly, but also an eminently wise thing. Notwithstanding what has been publicly said by an-ex-India official, who ought to have known better, respecting the character of the Maharaja, His Highness is not "a drunken debauchee", nor is he a man of immoral life. He has never been in the habit of taking intoxicating liquors; he is singularly abstemious. He has led a simple life, and has carefully avoided sensuality. The only fault I have ever heard brought against him by any one acquainted at first-hand with his character is that the rites of the religion he believes in have had more influence over him than on his subjects or his co-religionists think right, but more than certain Europeans approve, and that his devotions and his contemplations regarding a future life have taken up too much of his time. He is kind and indulgent and very affectionate. Instances were related to me while I was in India last year, illustrative of his great thoughtfulness and goodness of heart. He has more than once been known to put himself to inconvenience rather than occasion additional trouble to those about him. So much for his character as a man. If he had only had fair play as good a record of the Maharaja as a ruler would by this time have been forthcoming. Partab Singh, a despotic sovereign, began his reign well. Here is a record of what was begun-very largely in many cases, entirely in others-on the Maharaja's own initiative. I mention only the more prominent reforms:

1. Payment of all civil and military salaries monthly

instead of at irregular intervals, and thus avoiding accummulation of arrears.

2. Abolition of export duties.
3. Abolition of numerous vexatious duties on manufacturers and traders.
4. Abolition of the harkarabeshi, the sewai, and other heavy taxes levied on the cultivators of the soil.
5. Stoppage of the inhuman practice of punishing the innocent relatives of deserters from the army when the deserters themselves could not be found.
6. Abolition of the pernicious practice of farming the land revenue by letting it to the highest bidder.
7. Abolition of the practice of buying ghee, horses, wool, and other articles, through the revenue officials from cultivators, at nominal prices fixed by Government.
8. Abolition of the tax on Muhammadan marriages.
9. Increased allotment of funds for public works.
10. Stringent orders issued to prevent high officials and influential men influencing the decisions of Courts of Justice.
11. Equalization of the customs duty on salt.
12. Establishment of high schools at Jammu and Srinagar.
13. Municipal constitution granted to the cities of Jammu and Srinagar.
14. Equitable adjustment of import duties.
15. Leave Code, Educational Code, and other rules calculated to promote public interests, provided.
16. Corruption checked among civil and revenue officials by the introduction of a system of strict supervision as well as by the importation of an honest and educated element in the service.

And,

17. Amendment of certain laws.

Besides all these, a number of other reforms were taken in hand, and it was intended to press them with vigour. Unfortunately, matters did not continue so excellently as they were begun, though they have always been fairly well conducted. The fault is only a remote degree, if at all, lies with the Mahareja. The Residency system has been the bane of the

Kashmir State, as it has been the bane of many another State in India. Let me show how this came about.

Partab singh's accession was marked by a new departure in our relations with Kashmir. For the first time since Kashmir has been a feudatory of the British Crown, a Resident was appointed to the Himalyan Kingdom. The result was not satisfactory. Soon after Colonel Nisbet became Resident, a bundle of letters incriminating the Maharaja and making him a party to reasonable practices were handed to the Resident. He took them to Calcutta. Sir John Gorst, in the house of Commons, speaking the mind of the Government of India, as well as of the Secretary of State, declared no importance was attached to them. In the meantime by the exercise of what, the Maharaja himself in his letter to the Vicerory calls "many-sided pressures", a (so-called) letter of abdication was obtained from the Maharaja. On the strength of that document Partab Singh has been deposed. But not even the conditions of that communications have been carried out. The utmost that, under "many-sided pressures", the Maharaja would agree to was, that the assistance of the Government of India should be asked in the formation of a Council, over which Maharaja was to preside. This Council was to assist the Maharaja in carrying out needed reforms. Five Years was the limit set to this arrangement. The response to this proposal was a letter from the Government of India, informing the Maharaja that his offer has been accepted (!), he was to stand aside from all exercise of authority, the Resident was to become the Raja, and he was told an allowance, which was ungenerously described as sufficient for dignity but not for extravagence, would be made to him. No period was fixed for this arrangement to end. It might be "as long as the sun and the moon endure", so for as the letter of (virtual) deposition was concerned. The Government of India say that the letter contains some inconvenient stipulations, and it would be embarrasing to it as it stands. As soon as the Maharaja saw the manner in which the offer extorted from him had been misinterpreted, he wrote a long letter to the Viceroy disclaiming the interpretation put upon what he said, and concluding by asking Lord Lansdowne, if he could not release him from the intolerable position in which he had been placed, to shoot him through the head. Death was preferable to the

dishonour to which he had been subjected. Despite the Resident's efforts to detain him, the Maharaja left Srinagar and moved nearer to British territory to await the Viceroy's reply. That reply a telegram in The Times last week tells us, contains an expression of the hope of the Government of India that itmayhereafter see its way to restore Partab Singh to his rightful position. Possibly the interview promised to the Maharaja may be the means of the bringing this about speedily.

This incident, like scores of others affecting Indian Princes and their States, has happened, because the Govern . ent of India is in no way subject to that embodied conscience of present day civilization-an enlightened public opinion possessing punitive power. Without meaning it, and doubtless working, as it considers, with a single eye to the maintenance of British supremacy in India, the Indian Foreign Office is frequently guilty of grievous injustice. That office, more than any other department in the Indian Government, is in a position which neither man nor institution is good enough, or free enough from liability to error, to bear. There is no one to call it to account, no one to check its (may be inadvertent) over-zeal, no one to suggest that there is, perhaps, another side to a matter than that which has fixed itself in the Foreign Secretary's mind; not a whisper is ever raised, or is likely to be ever raised, by any one possessing power in India, suggesting that the traditions of the office might with advantage be at times broken; it is prosecutor, judge, and executioner; in its hands an India Prince is between the upper and nether millstones. The healthy criticism, the more or less adequate knowledge, and the sense of responsibility to Parliament and the Press, which keep the Foreign, Home, and Colonial Departments in touch with the nation, and which prevent any gross injustice or wide deviation from righteousness are wholly wanting in India. They are not supplied by the British Parliament, the ultimate ruler of India. As a consequence, the Indian Foreign Office, without possibly knowing it and certainly in many instances without meaning it, has been and is responsible for a vast number of acts of injustice which, if set forth in detail, would hardly be credited. The Kashmir incident is one of these.

If it be true that Lord Lansdowne intends himself to see

Maharaja Partab Singh, and to restore, with guarantees, the ruler of Kashmir to his place of power, His Excellency will do as much to strengthen the Queen-Empress's supremacy in India, as has been done by all the money spent during the past four or five years in strengthening the North-Western Frontier.

28. Constitution of the State Council, 1889.

1. The Council will be composed as follows :-
Raja Ram Singh,
Raja Amar Singh,
Rai Bahadur, Pandit Suraj Koul,
Rai Bahadur, Pandit Bhag Ram
and such other members as may be added from time to time by the Government of India.

2. The Council shall appoint one of its members as Secretary.

3. Vacancies in the offices of Members of Council shall be filled up and the nomination of additional members shall be made by the Government of Indla.

4. The distribution of business among the members shall be regulated from time to time by orders passed in Council.

POWERS OF COUNCIL

5. Subject to the general control of the Resident, the Council shall be the final authority on all questions affecting the frontier relations of the State and its dependencies and in all matters appertaining to its internal administation.

6. The Members-in-charge of departments of the administrationshall prepare a budget estimate of their respective departments for the final sanction and approval of the Council.

7. No legislative measures or schemes of general State reform shall be introduced except with the previous sanction of the Council.

8. The Council shall have power to veto or alter any orders passed by the Member-in-charge of the department in chambers and may call for and revise any proceedings in any

department of the administration.

9. All appointments and removals of Gazetted Officers shall be made by order of the Council.

10. The Council may lay down special rules for the guidance of any department of the administration.

CONDUCT OF BUSINESS

11. The Council shall hold its sittings on such date and at such time and place as may be determined.

12. Two days before the meeting the Secretary shall prepare an agenda of the business to be laid before the Council and circulate the same among the Members.

13. Eace Member shall at the same time be furnished as far as possible with copies of all the papers to be brought up at the meeting.

14. No motion when more than one Member present objects shall be laid before any meeting of Council for consideration until and unless it is borne on the agenda and a copy thereof supplied to each Member as provided in rules 12 and 13.

15. Three Members shall form a quorum.

16. If a quorum is not formed the meeting shall be adjourned till such day as the Chairman may direct.

17. If within fifteen minutes of the hour fixed for Meeting Council, all the Members have not arrived those present may elect a Chairman, and proceed to transact business provided a quorum is present.

18. In emergent case Raja Ram Singh and Raja Amar Singh may convene a special meeting of Council and the rules herein before prescribed for ordinary meetings shall apply to such meeting.

19. All proceedings in Council shall be conducted in Vernacular. Every resolution as passed by a majority of votes shall be entered in detail in a minute book by the Secretary and before the close of the meeting the proceedings shall be read over to all the Members present and shall be signed by them provided that any Member or Members dissenting from any resolution shall if they so desire cause their dissent to be recorded.

20. In English translation of the proceedings shall be forwarded without delay to the Resident for information.

21. The Resident shall be the final referee in all matters and may veto any resolution passed by the Council or suspend action thereon pending further explanation.

DUTIES OF SECRETARY

22. The Secretary shall

(a) Receive all papers submitted to the Council.
(b) Prepare and circulate agenda of business and give due notice of meetings to the Members.
(c) Call for information on matters to be brought up before the Council.
(d) Supervise the working of the office and custody and maintenance of records.
(e) Furnish each Member with copy of the proceedings of the Council.
(f) Compile the administartion report and returns.
(g) Comply with requisitions made to him by the Members-in-charge of departments.
(h) See that reports called for the Council are promptly sent for from departments concerned.
(i) Conduct all routine business appertaining to his office.

23. The Secretary shall keep:

(a) The seal of the Council.
(b) Registers of all establishments employed in the State, amended up-to-date.
(c) Budget estimates as sanctioned by the Council.
(d) Check statements of Budget sanctions.
(e) Register of supplementary Budget sanctions.
(f) List of pending references.
(g) Minute books of proceedings.

MISCELLANEOUS

24. If a member is unable to attend the meeting of the

Council he shall notify the fact to the Secretary.

25. All proceedings of the Council unless otherwise directed by the Council shall by published in the Local Gazette.

26. The Council may frame subsidiary rules for carrying out the above provisions and for regulating other matters falling within the scope of their authority.

29. Administration of Justice in Kashmir State, Note by Bhag Ram, Judicial Member of the Council, November 18, 1889.

(Extract)

I will avoid making any allusions to faulty procedure and technical drawbacks, instances of which are too numerous to mention, but I feel bound to state that, so far as my experince goes, the presiding officers of the Courts are as a class, generally, far from upright. Holding their appointments during the pleasure of the Chief, they not uncommonly gave way to influence, in fact the dominant influence of the Maharaja's servants had so powerful an effect over the Courts, that on one occasion nearly three weeks after my arrival, Mian Sawal Singh sent word to me through a big official, asking me to let off a person sentenced to imprisonment by one of my Subordinate Judges. This however, was the first and the last attempt so far as I was concerned, as I took the opportunity then and there to announce publicly, that I shall be compelled to take very serious notice if such perversion of justice was again attempted. I had reason to believe that my action did not meet with the approbation of the Maharaja, and on a second occasion when His Highness himself spoke to me in regard to another criminal case, I told him that I could only decide cases according to the dictates of my own conscience.

The presiding officers of Courts and judicial work performed by their clerks, and it has been with great difficulty that I have partially succeeded in getting them to record their proceedings in their hand. There are still a number of ignorant and illiterate Tehsildars and other officers, owing their employment to strong official influence, who would not and could not carry out by instructions.

I have come across cases, nay criminal trials in which a single line in the form of a judgement had never been recorded, while instances have repeatedly come to my notice of Courts neglecting the rudest principles of equity and jurisprudence, and putting suitors to all sorts of annoyance. Having had the honour to showing to the Resident a number of my decisions bearing out the views expressed above, I hardly think it necessary to encumber this note with detailed particulars.

Judicial cases against private persons or State servants, interested in politics, or in the intrigues at Court, are as a rule kept pending or adjourned sine die, such postponement having the two-fold object of keeping the culprit in awe and chestising him on occurrence of a suitable opportunity.

During the ministry of Diwans Lachman Dass and Anant Ram, Judicial Courts could not work with a grain of independence or self-respect. Judges blindly disposed of cases, as required by the Ministers in power, without any reference to the merits, and not unfrequently received written orders dictating decisions which were to be given.

Judicial officers, from corrupt motives, or to suit the interest of their employers, sometimes destroyed important papers and depositions, replacing them by false proceedings adapted to their judgements. To such an extent had the Courts lost public confidence that no party to a suit would credit them with original documents, and the pettiest case found its way to the highest Court, swelling law charges to the extent of double or triple of the amount claimed.

A curious custom prevailed, enabling private persons to make money by laying information exposing the conduct of State servants. Such complaints were called "Khair-Khwai", and were entertained by the Criminal Courts without any reference to the department in which the accused was employed. The officials, in a body, being addicted to misappropriation of monies received by them in the course of official duty, easily avoided investigation by bribing the informers, and the Darbar itself, not being well prepared to check corruption, or recover monies embezzled by its servants, such misappropriations were committed with impunity, so that as the present day there is hardly an official who, if a proper enquiry was instituted, would not have to account for his misconduct.

Receipts on account of unclaimed deposits and unclaimed property, as also fines and penalties, in certain cases, were seldom paid into the State Treasury. Judges of Sadar Adalats spent large sums, without any reference to higher authority. The other day I found that the Nazir of the Jammu Court has charge of items aggregating Rs. 2,500, extending over several years past, without having been brought to book in the finance accounts of the State. The same practice prevailed with greater impunity in other departments; the whole being due to the absolute want of a proper system of audit and control.

Tehsildars and other Revenue officers are known to be in the habit of imposing fines without recording any proceeding, and appropriating the receipts to themselves.

Execution of decree is tedious, and, as no civil case is held to be finally decided until it is confirmed in appeal by the highest tribunal, which generally takes seven to ten years, execution is generally stayed till then.

I will here say a few words regarding the laws in force. There is a Penal Code, but there is no Code of Criminal Procedure.

Similarly, there is a Code of Civil Procedure, but there is no substantive code of civil law, nor is there any law of limitation.

The stamp and registration laws are grossly imperfect.

My critical review of the State Penal Code was submitted to the Resident at Gulmarg. It is sufficient to show that the penal law is a wretched specimen of barbarity and oppression. It gives the Courts power to entertain complaints against witches and sorcerers, on payment of a fee of Rs. 50. The cow is held in the highest veneration, and no punishment is spared, however faulty the evidence may be. When a person is shown to have put a cow to death, his lands and property are confiscated, houses are brunt, permanent exile is ordered, and whole families are ruined. If the charge is proved by evidence, the culprit is sentenced to imprisonment for life. A person is bound to be sent to jail if he happens to yoke a cow to the plough, or otherwise take execessive hard work from that animal. It is a penal offence to kill animals for food or sell meat on certain days in each month. Adultery with a widow

is punished with great severity, particularly if the woman is related to the adulterer, and a complaint of adultery may be lodged by any person, whether he is or is not in any way connected with her.

There is clause in the Penal Code under which a Magistrate could take cognizance of an act or omission not specified therein, if such act or omission appears to him to be objectionable in the cause of society, and he may sentence the accused to a fine of Rs. 25. This gives Tehsildars and Revenue officers ample opportunities of punishing people for disobedience of order, contempt of authority, and other supposed offences.

A State defaulter is considered a criminal, he is kept in irons in the criminal jail on reduced diet, and is deported to distant and unhealthy stations, if he is unable to bride the officials.

30. Amrit Bazar Patrika, Kashmir under the British Administration, January 30, 1890.

(Extract)

One of the official arguments in justification of the deposition of the Maharaja of Kashmir is the apparent indifference of the entire body of the Indian Princes in regard to this violent act of the Government. Those who advance such an argument altogether ignore the fact that Indian Princes are perfectly incapable of criticising the conduct of the Paramount power. It is, however, not a fact that, slaves though they practically are they allowed this act of violence pass by without some sort of protest. Many Indian Princes were so powerfully moved by the incident that they did send secret messages to the Maharaja, deeply sympathising with his hard lot. They advised him to remain strictly loyal to the British Crown, and at the same time lay his case before Lord Lansdowne, from whom they assured him he would get justice. But the Maharaja has already anticipated his friends, and sent his memorable letter to the Vicerory. Lord Lansdown will thus see that, by denying justices to His Highness, he has not only bitterly disappointed the Maharaja of Kashmir, but also the Native Princes of India as a body.

That the deposition of the Maharaja caused immense sensation amongst the people of Kashmir and Jammu goes without saying. Indeed, an outbreak was seriously apprehended, and the European officials of the State passed their time in great anxiety. General Marquis de Bourbel, the Chief Engineer of the State, who had access to all classes of the people, found their temper so bad, that he thought it prudent to send away his family from Kashmir to Sialkot. There is no doubt that a serious outbreak would have occurred, if the Maharaja and Raja Ram Singh had not supreme control over the army. A hint from them was enough for the Dogras to rise against the new order of things and commit horrible deeds. But both Maharaja Partab Singh and Raja Ram Singh preferred to trust to the sense of justice of the British Government, and they firmly restrained the Dogras from committing any act of violence.

To what a length these Dogras are capable of going may be conceived from an incident which happened at the end of october last. One of the policies of the present regime is the reduction of the Kashmir army. A regiment of about 1,000 sepoys was thus ordered to be disbanded. But their pay was heavily in arrear, and they refused to obey the order till their salaries were paid in full. The Commander of the regiment had however no money to pay, and he pointed to them the house of the Governor of Kashmir. They besieged the Governor's house and threatened to kill him, and loot the bazar if he would not pay them. But the treasury was empty, and the Governor was unable to oblige them. So the poor man had to run to the Residency and seek the help of the Resident. Colonel Nisbet however left for Jammu, leaving Captain Ramsay temporarily in charge of the Residency. Captain Ramsay was in a fix. He however advised the Governor to withdraw the order of disbandment at once, and pacify the troops by reinstating them. This was done, and a serious outbreak prevented.

The above incident brings one fact prominently before the public—the utter emptiness of the Kashmir treasury. Indeed, the financial collapse of the State is almost complete. And we shall show by a few facts, how this has been brought about. First of all, highly paid officials have been thrust upon the State. For instance, the three paid Members of the Council

are Bhagram, Suraj Kaul, and Sheikh Ghulam Mohi-uddin. The first to get Rs. 1,500 per mensem, and the last Rs. 800. And yet Bhagram and Suraj Kaul each got only Rs. 600 while Extra Assistant Commissioners in British India, and Sheikh Gulam only Rs. 300.

But not only do these Members receive high salaries, they have been each given an Assistant or Naib on a pay of Rs. 300 per month. All these Assistants are creatures of Colonel Nisbet, whom he has imported from the British territory and through them he manages to keep his control over the Members. One of these Naibs or Assistants is a Gurkha named Thapa. Just fact a Nepalese thrust upon the people of Kashmir, not a word of whose language he can speak or understand. Besides the pay, these Assistants are allowed free quarters. The Governor of Kashmir has also an Assistant or Naib of the above description, one Afzal Khan, who is a well-known creature of Colonel Nisbet.

But if Colonel Nisbet is filling the State with his creatures, so is Raja Amar Singh procuring berths for his own favourtes. The old Vakil got Rs. 66 per month. He has been dismissed, and a railway man put in his place on a salary of Rs. 500 per mensum : A photographer, who previously taught Raja Amar Singh photography, has been appointed as Superintendent of the printing press on a pay of Rs. 500. The old officer of the Toshakhana, who got Rs. 200, has been dismissed, and the father of head servant of Amar Singh appointed to the post on a salary of Rs. 600. The loaves and fishes of the State are being thus divided mainly to the creatures of Colonel Nisbet and Amar Singh.

Besides many Europeans have been imported into the State on high pay. The Survey Officer, the Chief Engineer, and two or three Assistant Engineers, and the head of the Forest Department are Europeans. The contractors for Jhelum Valley road (the Murree road) and their subordinates are also Europeans. And this road alone devours half a lakh every month, perhaps more. Need anybody now wonder why there is no money in the treasury ?

Add to the above the costly hobbies of the Colonel Nisbet. One of these hobbies is the waterwork at Jammu. The treasury was empty, but yet he must prosecute the work and leave a

name behind. So he introduced two Engineer friends into the State and asked them to make an estimate of cost and undertake the work. But he was not yet satisfied. He promised them a reward of Rs. 10,000 if they would finish the work in 6 months. The result was that the engineers employed men and purchased materials at exhorbitant rates so as to finish the work in time, and get the reward. They finished the work and got the reward, but they have left a veritable white elephant upon the Kashmir State. The mere cost of pumping up the water is Rs. 100 per day, or nearly Rs. 40,000 per annum. The water might have been brought down from a higher level, and the cost reduced to almost nil. But the engineers must finish the work in 6 months—the prospect of a reward of Rs. 10,000 was before them. So they had no time to search and find out a reservoir on the top of some hill from where the water might come down of its own gravity. And they therefore dug out a well in the bed of the river, and the water has to be raised from there to a height of some 300 feet at the enormous cost stated above.

Nor is this all. Wretched water-piles, with old fashioned stands, have been introduced. They have been constantly bursting forth, and deluging the streets with water, and water-work at Jammu has proved altogether a strange phenomenon to the people. And one of the Engineers who were entrusted with the charge of this water-work, has been appointed on the Kashmir road on Rs. 1,000 per month.

Colonel Nisbet is about to confer the same blessing upon the people of Srinagar at an equally enormous cost. Indeed the water-works there have been already commenced. But there is no immediate necessity for good water at Srinager. The Jhelum water is quite enough for the purpose. But, we believe, the water-work at Srinagar will also be soon finished by Colonel Nisbet, and the treasury still further exhausted, and the State burdened with another white elephant. If Srinager wants anything it is the cleaning of its street, and not water.

But while such is the wretched condition of the finance of the Kashmir State, the British Government is going to thrust four British Officers upon the State, with the object of organizing the Kashmir troops. Whether they will be placed under the direction of Raja Ram Singh, who is the Commander-

in-Chief of the Kashmir army, we do not know. But it is not likely that these British officers will ever agree serve to under a Native Commander. We also see that Lieutenant-Colonel Neville Chamberlain has been posted as Military to the Council. It is needless to point out that these officers will cost a good deal of money to the State.

Here are a few more items of Expenditure. A new Residency House is about to be built at Jammu at a cost of one lakh. The Resident has already got a house there. But he must have another at the cost of the State. As Jammu and Sialkot have been joined by Railway, there is absolutely no necessity for such a palace at all at Jammu. And then money is being spent like water upon the Lalmundi palace and Residency houses, in expectation of Lord Lansdowne's visit to Kashmir in March next.

And lastly, the building of the Gilgit Residency which being vigorously pushed on, is a costly affair. Even such things as flag, staffs, furniture, etc. are being sent to Gilgit at the cost of the State. And the following cutting from an Anglo-Indian paper shows how Captain Durand is making himself merry at the expense of the poor people of Kashmir, and how he has been dealing with the subjects of the Maharaja as if they were British subjects :—

"Captain Durand, the British political Agents at Gilgit, is reported to have recently invited the chiefs of Punyal, Hunza and Nagar to come in person or to send suitable representatives to Gilgit to be present at a Darbar. Raja Safdar Ali Khan of Hunza deputed his half-brother, Mohammad Nasim Khan and the Raja of Nagar his eldest son, Raja Uhzar Khan, while the Punyal Chiefs, who are subjects of the Maharaja of Kashmir, came in person. A Darbar was held by the British Agent, with whom were the Governor of Gilgit and the General Commanding the Kashmir troops. and the establishment of the Gilgit Agency was formally announced. The Chiefs remained in Gilgit as guests for a week, the time being filled up with horse-racing, sports and polo matches in which the people of the country and the Kashmir sepoys freely joined".

31. Resident to Amar Singh, April 27, 1891.

I am directed by His excellency the Viceroy and Governor-General in Council to communicate for the information of the Kashmir State Council the following observations regarding the arrangements which the Government of India consider necessary for the exercise of Criminal and Civil jurisdiction within the territories of His Highness the Maharaja of Jammu and Kashmir.

2. The Government of India consider that the Regulations published with the assent of His Highness the late Maharaja in Foreign Department Notification No. 615-P. of the 28th May 1873 are not entirely suited to the present time. Since the publication of those Regulations considerable changes have been effected within His Highness' territories, and year by year the number of persons visiting Kashmir increases and the opening of the Jhelum Valley Road will doubtless attract more and more British capital into the valley of Kashmir. On the other hand the Government of India are glad to notice that there has been considerable improvement of late in the machinery for the administration of justice in Jammu and Kashmir, and that if the late Council continue to devote attention to this important question, it is believed that the Courts of the State will in time command the confidence of the general public.

3. Inasmuch as the Governor-General in Council possesses full personal jurisdiction over subjects of Her Majesty, who may happen to be within the territories of the Maharaja, it would not ordinarily be necessray to peaus before issuing such orders concerning them as might appear from time to time to be necessary. But the exisiting Regulations having been published with the assent of the late Maharaja, and therefore, out of courtesy to His Highness the present Maharaja and the Kashmir State Council, the Government of India have desired me to communicate to the Council their intention of making alterations, suitable to the existing conditions, in the present procedure.

4. The changes that will be made are embodied in the accompanying notification, and may be summarized as follows:-

Criminal

(a) Arrangements are made for investing the Resident in Kashmir and his Assistants with the necessary powers for enquiry into or trial of cases against-

(1) European British subjects.
(2) Americans.
(3) Europeans of any nationality other than British.
(4) Christians of European descent.
(5) Native Indian subjects of Her Majesty, such Indian subjects being either merely visiting the territories of His Highness or acting as servants of an European British subject, or,
(6) British subjects accused of having committed offences conjointly with European British subjects.

(b) The trial of Native Indian subjects who ordinarily dwell or carry on business or personally work for gain within the said territories will ordinarily rest with the Courts of the Durbar. At the same time it is to be distinctly understood that any such person convicted by such Courts has the right of making a presentation to the Resident in Kashmir, and that if that officer considers there is ground for interference, his representation on the subject to the Durbar will be attended to.

Civil

(d) Arrangements are made for investing the Resident and his Assistants with powers to dispose of Civil suits in which-

(1) Both parties are subjects of Her Majesty.
(2) The defendant is an European British subject.
(3) The defendant is a Native Indian subject of Her Majesty and at the time of the commencement of the suit does not ordinarily dwell or carry on business or personally work for gain within the territories of the Maharaja.

(e) All other suits between subjects of Her Majesty on the one hand and subjects of the Maharaja on the other hand will ordinarily be triable in the Courts of the State.

5. With regard to clauses (a) and (d) above, I am to request that the Kashmir State Council will favour me with an assurance that they will enforce the attendance of witnesses being subjects of the Maharaja and residing in his territories regarding whom processes have been issued by the Courts thus constituted by the Governor-General in Council.

6. Again, in regard to clause (e), I am directed to suggest to the State Council that, now that they have secured the services of officials who have had an opportunity of acquiring a certain amount of judicial and Magesterial experience in British India, it would be wise to issue orders that all cases, Civil and Criminal, in which British subjects are concerned, should be tried before specified Courts in Jammu and Srinagar, respectively and that the officers appointed to such Courts should invariably be chosen from among the best trained officials in the service of the State. By this means it is hoped the Courts of the State will command the confidence of British and Indian traders, and increased capital will be attracted into the country.

32. State Council Supplementary Rules of business, September, 5, 1896.

1. Petitions in respect of Revenue and Judicial cases shall be ordinarily presented to the Court or Officer concerned, under the regulations in force, all miscellaneous petitions presented to His Highness the Maharaja being, however, referred by him to the Member-in-Charge of the Department concerned for disposal or report, if necessary.

2. His Highness the Maharaja, may send for Proceedings finally disposed of by a Member in Chambers, and if he sees reason for not concurring in the decision or order given, may refer the matter to the Council, this rule shall not, however,

apply to regular Revenue and Judicial cases, pending or disposed of, for which a special procedure is laid down in the existing rules of business, and State Council Circular No: 47 dated 15th February 1890 under Resolution No: 15 dated 15.2.1890 and under Resolution No: 51 dated 18.1.1900.

3. Every Member-in-Charge of a Department shall prepare a synopsis of the business conducted by him outside the Council, showing the important matters disposed of by him, the action taken by him on suggestions made or Irshads issued by Highness the Maharaja, and the appointments or transfers made to posts exceeding Rs. 50 a month.

4. The synopsis referred to in Rule 3, shall be laid before the Maharaja for his perusal and signature, and shall than be sent to the Resident along with the Proceedings of the State Council.

5. No Khillats or rewards to State Officials shall be granted except on the recommendation of the Member-in-Charge of the Department concerned.

6. Khillats and donations given to persons not being officials of the State by direct Irshad of His Highness the Maharaja shall be limited to a value of not exceeding Rs, 12,000 per annum.

7. No grants of Nazul Property and alienation of State Property on Nazrana and otherwise shall be made except by a formal Resolution of Council, passed in consultation with the Resident.

8. It shall be competent to a Member-in Charge of a Department to reserve any question for an expression of the views of the Resident, the Council in all such cases referaining from finally disposing of the case until it is furnished with them.

9. All dismissals shall be invariably regulated by the procedure laid down and sanctioned by the State Council under its Rules.

10. No. expulsion from State territory shall be restored to except after consultation with the Resident.

11. All important papers, or, if necessary, copies of such papers relating to references entered in the Agenda, shall be sent to His Highness the Maharaja, a few days or as long as possible before the meeting.

5th September, 1896. Sd/- (Amar Singh)

33. State Council Proceedings, November 5, 1899.

Read Resident in Kashmir's letter No. 6575 dated 29th October, 1899 suggesting the distribution of different departments to be controlled by members of the State Council.

Resolved unanimously that the following distribution of the departments proposed by His Highness Maharaja be sanctioned and that the members concerned be informed accordingly.

Vice-President to Administer :

1. Foreign Department.
2. Military Department including stables, Baghikhana, Telegraph and post.
3. Police.
4. Dharamarth.
5. To shakhanas both ginsi and Reserve and museum.
6. Shikar preserves and game laws.
7. Mines.
8. Reception.

Revenue Member To Be In Charge Of :

1. Revenue.
2. Public Works Department.
3. Customs.
4. Education.
5. Sericulture.
6. State Property in British India.

Judicial Member to Control :

1. Judicial.
2. Jail.
3. Press.

4. Medical.
5. Forests.
6. Municipalities.
7. Council Secretariat.

34. Restoration of powers to Maharaja Pratap Singh, 1905.

LORD CURZON'S SPEECH

Your Highness,-Three times since I came to India as Viceroy have been privileged as representative of the Government to instal an Indian Prince, but have never before enjoyed the pleasure of conferring an enhancement or restitution of powers upon a ruling Chief, and in the annals of the Foreign office we can discover no record of such a ceremony ever having taken place. The present occasion is therefore unique in its character, as well as agreeable in its relation both to the Prince who is the recipient of the compliment and to the people who share in the honour that is being conferred upon their ruler.

This ceremony may be looked upon from a threefold point of view either as typing the policy of the paramount power, or as affecting the fortunes of the Maharaja or the destines of his State.

BRITISH POLICY TOWARDS NATIVE STATES

Let me say a word upon all those aspects of the case. The position which is occupied by the British Crown towards the feudatory princes in India is one of the greatest responsibility that is anywhere enjoyed by a sovereign authority. Some times it may impose upon that authority unwelcome or distasteful obligations. But far more often it is the source of a relationship which is honourable and advantageous to both, and which associates them in the bonds of a political union without any parallel for its intimacy or confidence in the world. As one who has represented the sovereign power for an unusual length of time in India I can speak with some right to be heard when I say that anything that enhance the security or adds to the dignity of the Indian princes is above all things

welcome to the British Government. Titles and honour and salutes it is in the power of the supreme authority in many countries to bestow, and it is from no vain or childish instinct that the world in all ages has attached value to these emblems or rewards. But surely amongst them the most dignified distinction to offer and the proudest to receive must be the augmentation of governing powers bestowed upons a ruler, to whom they are given not as a matter of course, but because he has been merited them by faithful devotion to the intrest of the people and by loyal attachment to the paramount power. Such an act is even more conginial to the latter if it marks the rescission of an attitude that may have been called for in different circumstances but that might be thought to carry with it the suspicion of ditrust.

DISQUIETING RUMOURS

It gives me, therefore the highest pleasure to be here today to confer this particular honour upon one of the foremost of the Indian Princes. But the pleasure is enhanced by the circumstances of the State and of the ruler to whom it is offered I know not why it is, but the State of Kashmir, so fertile in all its resources, has always been more productive of strange rumours than any other native State in India. Thus in Lords Lansdowne's day it was widely circulated that the State was about to be taken over by the Crown. Similarly a few years ago, at the very time when I was first considering with Your Highness the restoration of your powers, it was actually spread abroad that I was discussing with you a territorial exchange by which the Kashmir Valley should pass into the hands of the Government of India and that the British officials were even to come after the manner of the old Moghuls and spend their summer at Srinagar or Gulmarg. Only the other day a fresh crop of silly rumours had to be formally denied, namely that in handing back to you the first place in the government of your State, we had imposed conditions as regards the tenure of properuty by Europeans in Kashmir for which there was not one word foundation. Your Highness, is not the action which I am taking today the most eloquent commentary upon these absured fictions? Does it not testify in the most emphatic manner to

the rectitude and good faith of the British Government?

If excused for a different policy, for a policy of escheat or forefeiture in native States, were required, History will supply cases in which they have sometimes not been lacking. But we have deliberately set ourselves to carry out opposite political theory, namely to retain the native States of India intact, to prolong and fortify their separate existence, and to safeguard the prestige and authority of their rulers.. Such has been our attitude towards Kashmir ever since the end of the first Sikh War when we made over to your grandfather, already the ruler of the State of Jammu, the much more valuable possession of Kashmir. Since that day there has been no departure from this policy, and there has been no more striking evidence of it than the step which I am taking today and which I consider it my good fortune that before I leave India I am in a position to take. It shows conclusively, if any further proof were required that it is our desire to see Kashmir and Jammu a single and compact State in the hands of a ruler qualified to repersent its dignity and authority before all India.

PERSONAL FRIENDSHIP

Your Highness, there is a third reason why I have found this act so agreeable, and that is personal to yourself. Since I arrived in India when you were the first ruling chief to greet me upon the steps of Government House at Calcutta we have met on many occasions and have constantly corresponded. You have been my guest at Calcutta, and it is only by a series of accidents first the flood in 1903, and then the delay in my return from England last year, and finally the circumstances attending my departure in the present autumn-that have prevented me from enjoying the princely hospitality that you have so frequently pressed upon me at Srinagar. However, though these opportunities have been wanting there have not been lacking many others not merely of acquiring your Highness's friendship but of forming a personal regard for yourself and a High opinon of these qualities of head and heart which will now find an even wider scope for their exercise. I feel that I am the indirect means of honouring a prince who will so conduct himself as to be worthy of honour, and who will

never cause my successors to take the step which I have taken.

ADVANTAGES AND IMPROVEMENTS IN KASHMIR

The State of Kashmir is indeed a noble and enviable dominion of which one would wish to be the ruler. Its natural beauties have made it famous alike in history and romance, and they draw to it visitors from the most distant parts. It possesses a laborious population. Its industrial resources are already growing rapidly, and are capable of immense additional expansion. Its accounts have been placed in excellent order; its land settlement has been effected on equitable lines; its revenue are mounting by leaps and bounds; it is about to be connected with India by a railway and will thus lose the landlocked condition which has often been the source of economic suffering, without, I hope, sacrificing the picturesque detachment that renders it attractive to visitors. Your Highness will remember that this railway was my first official suggestion to you at Calcutta in January, 1899, and though nearly seven years have since elapsed I am pleased to think that the alignments and gauge are now fixed.

Finally, your State possesses a mountain frontier uneqalled in diversity of race and character, of natural beauty and political interest, and towards its protection you make the largest contribution of any State in India to imperial defence. I allude to the Kashmir Imperial Service Troops of which your Highness is so justly proud, and whose service to the Empire has already won for your Highness the exalted rank of a British General. Such are the features and the Prospects of the State of which your Highness is the ruler, and of which you are now given the supreme and responsible charge.

NATURE OF THE NEW POWER

Henceforward the State Council which for the last sixteen years has administered the affairs of the State will cease to exist, and its power will be transferred under proper guarantees to your self. You will be assisted in the discharge of these duties by your brother Raja Sir Amar Singh, who has already occupied so prominent a position in the administration and

who will be your chief minister and right-hand man. I am convinced that he will devote his great natural abilities to your faithful service, and it will be your inclination as well as your duty to repose in him a full measure of your trust.

In all important matters you will be able to rely upon the counsel and support of the British Resident, who, owing to the peculiar conditions of Kashmir, has played so important a part in the recent development of the country and whose experience and authority will always be at your command and will assist to maintain the credit of the State.

COUNCIL AND EXHORTATION

I feel convinced that your Highness will exercise your powers in a manner that will justify the Government of India for their confidence and that will be gratifying to your people and creditable to yourself. You rule a State in which the majority of your subjects are of different religion from the ruling caste, and in which they are deserving of just and liberal consideration. You rule a State which is much before the eyes of the world and is bound to maintain the highest standard of efficiency and self respect. Finally, you rule a State which has a great and splended future before it, and which should inspire you with no higher or no lower aim than to be worthy of the position of its ruler, and thus to add fresh lustre to the proud title of Maharaja of Jammu and Kashmir.

35. New Arrangements for the Administration of Kashmir by Resident in Kashmir, May 1906.

(Extract)

Note on the new arrangements for the administration of the Jammu and Kashmir State.

1. The State Council is abolished.

2. The powers of the State Council will be assumed by His Highness the Maharaja on the following conditions:-

(i) That His Highness will exercise his powers under the advice of the Resident; that he will take no step of importance

without consulting him; and that he will follow his advice whenever it may be offered ;

(ii) that the annual budget will be prepared and passed in consultation with the Resident, and that expenditure not provided for therein shall only be incurred after his previous approval. The previous sanction of the Resident shall also be necessary to any reappropriation when the sum to be reappropriated from or to any single head of expenditure amounts to or exceeds Rs. 10,000 either by itself, or when added to previous reappropriations made during the same year to or from the same head;

Chief Revenue Officer.
Chief Judicial Officer.
Chief Engineer, Public Works Department.
Engineer-in-Chief, Railway Department.
Engineer-in-Chief, Electric Engineering Department.
Settlement Commissioner.
Accountant General.
Superintendent of Customs and Excise.
Director of Sericulture.

(iii) that the officials of the Kashmir administration holding the appointments named above shall only be appointed or removed with the concurrence of the Government of India ;

(iv) that the Maharaja shall appoint a Minister with the previous approval of the Government of India, by whom the business of all departments shall be laid before him;

(v) that each departmental budget estimate shall be submitted to the Maharaja who, after consulation with the Maharaja and the Resident as in (ii) above, shall submit it for the final sanction and approval of His Highness;

(vi) that subject to the proceeding rules, His Highness the Maharaja shall have power to veto or alter any orders passed by the head of a department, and may through the Minister call for an revise any proceedings in any department of the administration;

(vii) that all appointments and removals of gazetted officers shall be made by order of His Highness the Maharaja

on due cause shown;

(viii) that an English translation of the proceedings and orders of the Maharaja or the Minister in the following classes of cases shall be forwarded fortnightly for the Resident's information:

(a) orders modifying the annual budget for the year as finally passed by the Maharaja;
(b) orders involving alienation of the revenue or remission of taxation;
(c) orders involving the appointment or removal of gazetted officers;
(d) orders effecting the new Railway or Electrical Engineering Department;
(e) orders passed on the assessment reports of the Settlement Department, or on their reports on Revenue-free Holdings, Jagirs, Muafis, Inams, & c;
(f) orders passed on the proposals made by the Sericulture Committee or the head of the Sericulture Department;
(g) orders passed in regard to annual or periodical contracts given by the State;
(h) orders appertaining to the administration of the frontier.

(ix) That the existing arrangements in regard to the allowances enjoyed from the State revenue by the Maharaja shall continue unchanged;

(x) The Minister shall have general control of all Departments, and be the channel of communication for them between the Residency and His Highness the Maharaja;

(xi) The appointment of Minister in charge of the Foreign Department will be created with the proviso that the officer selected for the post shall be acceptable to both His Highness the Maharaja and his Prime Minister;

(xii) The rules of business already in force and "standing orders" for the Army shall be adhered to until any necessity for their modification is shown, with the exception that all matters hitherto referred to the Council shall in future be referred to the Durbar through the Prime Minister;

(xiii) No existing Resolution of the State Council shall be

cancelled or modified until final orders to that effect have been passed by the Durbar in consultation with the Resident; and

(xiv) The powers of Members in charge of, and Head of Departments and the regulation of work between the various Departments have already been clearly defined in State Resolutions, and no change shall be made until the necessity for such change has been established.

36. Transanction of Business of the Council Memorandum Maharaja Pratap Singh, 1906.

(Extract)

Consequent on the abolition of Council the following arrangements as to the conduct of work by the Ministers and the Chief Ministers are hereby laid down:

The Ministers

The Ministers shall for the present continue to exercise the same delegated authority in respect of the various departments under their control, which they used to exercise as Members of Council during the existence of the State Council, and shall submit such matters for the orders of His Highness the Maharaja as were submitted to that administrative body for dicision. Such matters shall be submitted through the Chief Minister accompanied by a clear memorandum on the case and the connected files. His Highness may, if he considers necessary make verbal enquiries from the Minister about a matter thus submitted to him, by calling upon the Minister concerned to to attend at a special time.

Chief Minister

The Chief Minister shall be the channel of communication between the Ministers and His Highness the Maharaja. All references received by the Chief Minister from the different Ministers shall be forwarded by him to His Highness the Maharaja for orders, together with his own opinion on the

proposals as made by the different Ministers. When submitting the files to His Highness the Maharaja, the Chief Minister will forward with them an abstract of the case which shall be prepared in the office of the Chief Minister in form appended hereto. A chalan giving the details of the cases thus sent up should also be forwarded. This chalan shall be signed by the Private Secretary to His Highness and returned to the Chief Minister's Office. On the day following the one on which the papers are thus received, they will be produced before His Highness and the Chief Minister by the Private Secretary at the time fixed for the transanction of such business. The items of business in which His Highness has only to express an agreement with the Chief Minister's views shall have a note made to the effect in that statement, while the references in which His Highness entertains a different opinion shall be discussed with the Chief Minister, and their final opinion arrived at shall form the basis of His Highness's order which shall on its being passed be recorded and note thereof duly entered in the appropriate column in the said statement. Such cases when finally disposed of by His Highness shall also be returned to the Chief Minister, together with the statement above referred to, setting forth the orders of His Highness on the references submitted to him. The Chief Minister shall then retain in his office the abstract of each case sent up by him, his own note of opinion, and the original order of His Highness, and shall communicate the orders passed on the references by His Highness to the Ministers concerned, returning to them at the same time the original files.

His Highness reserves to himself the function of seeking the advice of the Resident in Kashmir in matters of importance, particularly where difference of opinion is involved, in such manner as he may consider desirable.

The fortnightly abstract of proceedings to be sent up to the Resident shall be prepared in the Chief Minister's Office and forwarded to the Residency by the Chief Minister.

37. Letter from Chief Minister Jammu and Kashmir State to Maharaja Pratap Singh, July, 2, 1919.

In accordance with the direction contained in Your Highness's letter dated the 28th January 1919, I communicated officially to the Resident in Kashmir Your Highness's request for the grant of full and unrestricted powers in the control of the administration of the State and asked him kindly to move His Excellency the Viceroy to accord his sympathetic and favourable consideration to it.

The Resident laid Your Highness's request before His Excellency the Viceroy and has communicated His Excellency's decision thereon in his letter No. 180-C dated the 28th May, 1919.

I laid this letter before Your Highness and explained its contents. In accordance with Your Highness's verbal orders the changes sanctioned by His Excellency are explained below:

(a) Method followed in respect of the tendering of advice by the Resident in matters of importance.

The procedure in vogue is that a proposal is first submitted to Your Highness for sanction. If it is sanctioned by Your Highness, it is referred to the Resident for approval. In future the procedure will be that it will first be laid before Your Highness. If it is approved or sanctioned by Your Highness, it will be referred to the Resident by the Chief Minister demi-officially for advice. The case will be again laid before His Highness for final orders after the Resident's advice has been obtained. The present method will thus be altered so as to ensure that the Resident's advice will in all cases be obtained before and not after a proposal is submitted to Your Highness for sanction.

(b) Submission of fortnightly synopsis of proceedings and orders passed by Your Highness.

In accordance with the condition (viii) of Lord Curzon's

Kharita dated the 30th August 1905, a synopsis of orders passed by Your Highness in certain cases is to be forwarded to the Resident fortnightly. The Government of India have agreed that orders passed under headings (a), (c), (d), (e), (f) and (g) need no longer be reported, provided that any orders passed in these classes of cases, which are contrary to or involve any important established principle, are, communicated by the Chief Minister to the Resident, but orders passed under (b) and (h), viz., (1) orders appertaining to the frontier, should continue to be reported.

(c) PREPARATION OF BUDGET

The holding of the annual Budget meetings will be discontinued. The Budget estimates will in future be submitted to the Chief Minister who, after consulting Your Highness, will take the advice of the Resident with regard to individual items included in the Budget will not be required if the expenditure is devoted to the purpose for which the allotments are made. Your Highness will also be able to sanction expenditure up to a limit of Rs. 20,000/- on the entertainment of Ruling Chiefs and other distinguished guests visiting Kashmir which cannot at present be incurred without Resident's approval.

It may be added that subject to the limitations imposed by the first five conditions laid down in Lord Curzon's Kharita dated the 20th August 1905 as subsequently modified; Your Highness possesses and can exercise powers of veto, revision and review in all cases.

It may also be stated that the Government have sanctioned an increase in Your Highness Privy Purse allowance from 10 lakhs per annum with effect from the Baisakh, the commencement of the current financial year.

If Your Highness approves, the revised procedure will be introduced forthwith.

x x x x x x x

Approved. The action may please be taken accordingly

Sd/-

Pratap Singh, Maharaja

Lieutenant General, G.C.S. I.,

G.C.I.E., G.B.E., L.L.D., 23-7-1919.

38 Regulation No. XLVI Jammu and Kashmir State Civil Courts Regulation, 1921.

(Extract)

3. There shall continue to be a High Court for the Jammu and Kashmir State.

4. The High Court shall be deemed for the purpose of all enactments for the time being in force to be the highest Civil Court of appeal or revision, subject to the control of, and the judicial powers exercised by, His Highness the Maharaja Sahib Bahadur.

5. The High Court shall make rules for the transaction of the work of the High Court.

6. (1) The High Court shall have a Registrar and shall have the power to appoint such Ministerial Officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Regulation.

(2) The Registrar and the Ministerial Officers appointed under this section shall exercise such powers and discharge such duties of non-judicial or quasi-judicial nature as the High Court may direct.

(3) Any Ministerial Officer may be suspended or dismissed from his office by order of the High Court.

7. (1) The general superintendence and control over all other Civil Courts shall be vested in, and all such Courts shall be subordinate to the High Court.

(2) The High Court shall from time to, time visit and inspect the proceedings of the Courts subordinate to the High Court and shall give such directions in matters not provided for by law as may be necessary to secure the due administration of justice.

8. (1) The High Court may make rules consistent with this Regulation and any other enactments for the time being in force:

(a) providing for the translation of any papers filed in the High Court and copying and printing any such papers or translations, and requiring from the persons at whose

instance or on whose behalf they are filed payment of the expenses thereby incurred;

(b) declaring what persons shall be permitted to practise as petition-writers in the Courts of the State, regulating the conduct of business by persons so practising, and determining the authority by which breachers of rules under this clause shall be tried;

(c) determining in what cases legal practitioners shall be permitted to address the Court in English ;

(d) prescribing forms for seals to be used by those Courts;

(e) regulating the procedure in cases where any person is entitled to inspect a record of any such Court or obtain a copy of the same, and prescribing the fees payable by such persons, for searches, inspections and copies;

(f) conferring and imposing on the Ministerial Officers of the subordinate Courts such powers and duties of a non-judicial or quasi-judicial nature as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed;

(g) prescribing forms for such books, entries, statistics and accounts as it thinks necessary to be kept, made or compiled in those Courts or submitted to any authority;

(h) providing for the inspection of those Courts and the supervision of the working thereof;

(i) regulating the exercise of the control vested in the High Court by section 35 (4) of this Regulation; and

(j) regulating all such matters as it may think fit, with a view to promoting the efficiency of the judicial and Ministerial Officers of those Courts, and maintaining proper discipline among those officers.

(2) Whoever breaks any rule made under clause (b) shall be punished with a fine which mayextend to fifty rupees.

9. (1) The High Court shall comply with such requisitions as may be made by His Highness for certified copies, or, extracts from records of the Court and the Courts subor-

dinate thereto.

10. (1) The High Court, when sitting as a Court of Civil judicature, shall take evidence and record judgments and orders in such manner as it, by rule, directs, and may frame forms for any proceeding in the Court in the exercise of its civil jurisdiction.

(2) The following provisions of Code of Civil Procedure shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, rule 3 of Order X, rule 5 to 9 (both inclusive), rule 11, rule 13 to 15 (both inclusive) and rule 16 of Order XVIII (so far as it relates to the manner of taking evidence), rules 1, 3, 4 and 5 of Order XX and so much of rule 7 of Order XXXIII as relates to the making of a memorandum.

11. The High Court has and shall have power to remove and to try and determine as a Court of extraordinary original jurisdiction any suit being of falling within the jurisdiction of any Court subject to its superintendence when High Court shall think proper to do so, either on the agreement of the parties to that effect or for purpose of justice.

12. The High Court shall have such power and authority in relation to the granting of probates of last wills and testaments and letters of administration of the goods, chattles, credits and all other effects whatsoever of persons dying intestate whether within or without the State as are or may be conferred on it by any law for the time being in force.

13. Besides the High Court, the Courts of Small Causes established under the small Cause Courts Regulation, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely :

(1) The Court of the District Judge, also called the District Court;
(2) The Court of the Additional Judge;
(3) The Court of Subordinate Judge; and
(4) The Court of the Munsiff.

X X X X X

33. (1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge exercising original jurisdiction, shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which the decree or order had been made by the District Judge, an appeal would not lie to that Court.

34. (1) Save as aforesaid an appeal from a decree or order of a Subordinate Judge shall lie:

(a) to the District Judge where the value of the original suit in which the decree or order was made did not exceed two thousand and five hundred rupees; and
(b) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a Munsiff shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) An appeal from the order of District Judge on the appeal from the order of the Munsiff under section 25 shall lie to the HighCourt if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

(5) The High Court may, with the previous sanction of His Highness, and by notification in the State Gazette, direct that appeals lying to the District Court under sub-section (2) from all or any of the decrees or orders passed in an original suit by any Munsiff shall be preferred to such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly, and the Court of such Subordinate Judge shall be deemed to be a District Court for the purposes of all appeals so preferred.

39. Sri Pratap Reforms Regulation Reserved Subjects, 1922.

In exercise of the powers under Section 6 of the Sri Pratap Reforms Regulation 1918, I hereby direct that Military matters shall be laid before me by the Commander-in-Chief and the following matters with the opinion of the Member-in-Charge of the department concerned for my final disposal; all others being laid before me in Council:

1. Matters bearing upon the relations between His Highness the Maharaja and the British Government and Feudatory Chiefs within the State.
2. Matters relating to prerogatives, rights, powers, duties or privileges of His Highness the Maharaja or his successors.
3. Matters relating to the management and control of the household of His Highness the Maharaja or his successors.
4. Matters relating to the rights, privileges, easements, assignments and gifts and allowances of the Ruling family of the J&K State.
5. Matters regulated by treaties or formal agreements now in force or which may hereafter be entered into by His Highness the Maharaja with the British Government and Feudatory Chiefs of the J&K State.

40. Sri Pratap Reforms Regulation No. IV of 1922.

I accord sanction to Sri Pratap Reforms Regulation, first part, as a tentative measure for one year. It will come into force from the date the first Council meeting of the Executive Council sits. This order should be published in the State Gazette.

Whereas, in view of the stage of evolution which the Administration of the J&K State has reached, it is expedient to amend its constitution so as to increase the efficiency of the Administration and to afford the means for the association

therewith of subjects of the State, it is hereby encted as follows:

(1) This Regulation may be called the Sri Pratap Reforms Regulation,.1918.
(2) It shall come into force on and from the date to be fixed in this behalf by His Highness the Maharaja of Jammu and Kashmir.

CONSTITUTION OF THE J & K STATE COUNCIL

2. From the date of commencement of this Regulation or from such other date thereafter, as may be specified by His Highness the Maharaja, and Executive Council, hereinafter called"The Jammu and Kashmir State Council" shall be estblishsd in the State.

3. (1) The Jammu and Kashmir State Council shall consist the following Members:

Commander-in-Chief and Senior Members.
Foreign Member.
Revenue Member.
Law Member.
Home Member.
Member for commerce and Industry.

(2) Raja Sir Harisingh, the Commander-in-Chief, shall have precedence over the other Members of the Council, the Foreign Member shall stand next, and the other Members according to seniority.

4. His Highness the Maharaja shall be the president of the Jammu and Kashmir State Council.

5. The J&K State Council shall also have a Secretary and such establishment as may be deemed necessary.

6. All matters which, under the existing constitution, require orders of His Highness the Maharaja and cannot otherwise be dealt with by any Member or any other authority under powers delegated to him by virtue of any law, rule, regulation or practice sanctioned by His Highness, shall in future be submitted to His Highness in the J&K State Council, with the exception of the subjects reserved specially for final disposal

by His Highness.

41. High Court Code of Civil Procedure.
(Extract)

100. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, as appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely:

(a) The Decision being contrary to law or to some usage having the force of law;

(b) The decision having failed to determine some material issue of law or usage having the force of law;

(c) A substantial error or defect in the procedure provided by this Code of by any other law for the time being inforce, which may possibly have produced error or defect in the decision of the case upon the merit; and

(d) The decision having varied cancelled or reversed the decision of the Court of first instance, where the subject matter of the suit exceeds two hundred rupees in value.

(2) An appeal may lie under this section from an appelate decree passed exparte.

101. No second appeal shall lie except on the grounds mentioned in section 100.

102. No second appeal shall lie in any suit of the nature cognizable by Courts of small Causes, when the amount or value of the subject matter of the original suit does not exceed five hundred rupees.

42. Constitution of Jammu and Kashmir State Council 1924.

1. The Council shall consist of the following Members:

1. Commander-in-Chief and senior and foreign Member.

2. Revenue Member.
3. Home and Law Member.
4. Public Works Member.
5. Finance and Police Member.
6. Member for Commerce and Industries.

2. The Council shall have a Secretary and necessary establishment.

3. Except as provided for in Article 5 below, the Senior Member, the member next in order of the seniority present at the meeting shall preside.

4. A quorum of the Council shall consist of four Members.

5. With the exception of the subjects enumerated below which are reserved for the Commands of His Highness all matters shall be dealt with by the Council and the proceedings of the Council shall be submitted to His Highness by the Council Secretary for sanction, no resolution being brought into force until the sanction of His Highness has been obtained. If His Highness disagrees with any resolution he will inform the senior Member of the time and place at which the Council should attend and discuss the case in question in the presence of His Highness. If after discussion His Highness still disagrees, he will there upon exercise in Council his prerogatives of veto and decision in the case shall be as commanded by His Highness.

6. In the Reserved subjects enumerated below, the following procedure shall be adopted:

1. Military matters shall be submitted to His Highness for his commands by the Commander-in-Chief.
2. Cases connected with other Reserved subjects shall be submitted to His Highness for his commands by the Member concerned through the senior Member.
3. Appeals which lie to His Highness under section 34, 35, 36 of the High Court Regulation and cases for confirmation of sentences under section 38 of the said regulation, shall be referred to the Law Members for opinion, who shall after hearing the parties, submit the cases through the senior Member for the orders of His Highness.

4. Nothing herein contained shall, in any way derogate from the powers of His Highness to refer any matters enumerated in the list of Reserved subjects to Council whenever he may consider it expedient to do so.

RESERVED SUBJECTS

1. Military.
2. Political matters affecting the peace and Good Government of the State.
3. Treaties and agreements now in force or which may hereafter be entered into by His Highness with the British Government or his Feudatory chiefs.
4. The relation between His Highness and the British Government or his Fendatory Chiefs.
5. Prerogatives and powers of His Highness, and the rights, privileges, gifts and allowances of the ruling family, its relations and connections.
6. Titles, Salutes, Ceremonials, Tours and Special occasions.
7. Frontier affairs.
8. Residency and Residency Correspondance.
9. Khillats, Tambols, Vartans and Grants at His Highness disposal.
10. Reception and Entertainment of Guests, Allocation of Huts, Rest-Houses and Guest-Houses.
11. Toshakhanas.
12. Rakhs and Game Preservation.
13. State Representatives.
14. Baggikhana, Malmaveshi, Stables, Boats and Cars.
15. Jagirs and Muafis.
16. Devasthans and Dharmarth Trust Fund.
17. Appeals which lie to His Highness under Section 34, 35, 36 of the High Court Regulation, of Sambat 1978 and cases submitted to His Highness for confirmation of sentences under section 38 of the said Regulation.
18. Tasdiq-i-Wasiqajat.
19. Police special Reports as Accidents, Riots, Arrival and suspicious movements or actions of Visitors.

Note : Petitions submitted to His Highness direct shall be referred through the Senior Member to the Member-in-Charge of the Department concerned for disposal or report as the case may require.

DISTRIBUTION OF PORTFOLIOS

1. Commander-in-Chief and Senior and Foreign Member.

(a) Commander-in-Chief-Military.
(b) Senior Member

1. General Supervision.
2. Political matters affecting the peace and good Government of the State.
3. Receipt and despatch of all correspondence between His Highness and all officials.
4. General Administration Report.

(c) Foreign Member.

1. Treaties and agreements now in force or which may hereafter be entered into by His Highness with the British Government or his feudatory chief.
2. The relation between His Highness and the British Government or His feudatory chiefs.
3. Prerogatives and powers of His Highness and the rights, privileges, gifts and allowances of the Ruling Family; its relations and connections.
4. Titles, Salutes, Ceremonials, Tours and Special Occasions.
5. Frontier affairs.
6. Residency and Residency correspondance.
7. Khillats, Tambols, Vartans and Grants at His Highness.
8. Reception Department, Entertainment of Guests, Allocation of Huts, Rest Houses and Guest Houses.

9. Toshakhanas.
10. Rakhs and Game Preservation.
11. State Representatives.
12. Baggikhana, Malmaveshi, Stables, Boats and Motor cars.

(d) Revenue Member.

1. Land Revenue.
2. Jagirs and Muafis.
3. Revenue Settlement.
4. Co-operative credit Societies.
5. Agriculture.
6. Horticulture.
7. Civil veterinary.
8. Devasthans and Dharmarth Trust Fund.
9. Red Cross.
10. State property in British India.

(e) Home and Law Member.

(a) Home

1. Education.
2. Medical and Jails.
3. Municipalities.
4. Research and Libraries.
5. Archeology and Museums.
6. Manageries.
7. Meteorological Department.

(b) Law

1. Judicial department and Legislation.
2. Appeals which lie to His Htghness under Section 34, 35 and 36 of the High Court Regulation of Sambat 1978, and cases submitted to His Highness for confirmation of sentences under Section 38 of the said Regulation.
3. Tasdiq-i-Wasiqajat.

(f) Public Works Member.

1. Irrigation.
2. Roads and Buildings.
3. Electrical Department.
4. Mechanical Department.
5. Telegraph Department.
6. Telephone Department.

(g) Finance and Police Member.

1. Finance.
2. Treasuries.
3. Accounts.
4. Audit.
5. Stamps.
6. Kashmir valley food control.
7. Police.
8. Police Special Reports, such as Accident, Riots, Arrival and Suspicious movements or actions of visitors.

(h) Member for Commerce and Industries.

1. Forests.
2. Sericulture and Silk Weaving.
3. Mulberry culture.
4. Mining.
5. Commerce and Industries.
6. Excise.
7. Customs.
8. Stationery.
9. Industrial Education.
10. Printing Press.

POWERS OF THE COUNCIL

1. Subject to the sanction of His Highness, the Council shall be the final authority in all matters which cannot be dealt with finally by any member or any other

officer, by virtue of powers delegated to him under any law, rule, regulation, order, resolution or practice sanctioned before the constitution of the Council, or sanctioned in future by the Council with the exception of cases relating to the subjects reserved for the commands of His Highness under the title or Reserved Subjects.

2. The Council shall, amongst other things, be empowered:
   (a) to see that the Annual Budget is framed and submitted to Council six weeks before the commencement of the next Financial year;
   (b) to pass the Annual Budget;
   (c) to sanction the reappropriation of any expenditure from one Head to another of the General Budget, over and above the powers delegated to Members;
   (d) to sanction all extra grants not provided for in the Budget;
   (e) to sanction all appointments and removals of Gazetted Officers;
   (f) to sanction leave to officers, over and above the powers delegated to Members;
   (g) to hold or cause to be held departmental enquiries into the conduct of any officer and to call for records from any office through the Member-in-Charge and to pass such order as may be considered necessary;
   (h) to sanction pensions or allowances to Gazetted officers, over and above the powers delegated to Members, also special pensions and compassionate or other allowances for life or for lesser periods to employees of the State, their heirs or representatives;
   (i) to pass progress and other Reports submitted by Members.
   (j) to sanction acquisition of land under the Land Acquisition Act, over and above the powers delegated to the Revenue Member and to grant land under the State Waste Land Rules or under the House-building Rules;
   (k) to settle boundary disputes and questions relating

to the Settlement Department, over and above the power delegated to the Member concerned;

(l) to decide Appeals against orders passed by Member of Council in cases which are not specifically included in the Reserved Subjects;

(m) to sanction suspensions or remissions of Revenue over and above the power delegated to the Member concerned;

(n) to issue instructions for the more efficient organisation and dispatch of business in the various departments of the State and to make rules to regulate the Proceedings of any department;

(o) to settle all matters pertaining to more than one department;

(p) to revise any order passed by the Member-in-Charge of a department;

(q) to call for and modify any proceedings in any department of the Administration and to stay the execution of any order pending the final decision of Council;

(r) to sanction scheme of general reform, no such scheme being introduced without the previous sanction of Council.

RULES FOR CONDUCT OF BUSINESS IN THE COUNCIL

The Rules for the conduct of business in the Council shall be as follows:

1. Every case to be submitted to Council shall be sent to the Council Secretary by the Member concerned. The Member concerned shall see that a complete precis of the case is drawn up, and that his own opinion and opinions of the Head of the Department or Heads of the Departments subordinate to him and affected by the question at issue are duly recorded.
2. In every case in which financial issues are involved, the opinion of the Finance Member shall be obtained by the Member concerned and submitted with the case to Council.

3. When it is proposed to sanction, amend or repeal any regulation, rule, Law, order or notification the opinion of the Law Member shall be obtained by the Member concerned and submitted with the case to the Council.
4. In every case which directly affects more than one Member of Council, the Member submitting the case shall see that the opinion of the other Member or Members directly concerned and the opinion of the Heads of Departments affected are duly obtained and recorded before the case is referred to Council.
5. The Council Secretary shall prepare, in the order of the receipt, a list of all cases received from Members in the prescribed and complete form, he shall then draw up with approval of the Senior Member the Agenda for the Council Meeting; as a general rule, no case shall be entered in the Agenda unless it has been received at least four clear days before the next meeting is due to take place.
6. When the Agenda has been drawn up, copies shall be forwarded to every Member at least 48 hours before the time fixed for the Meeting of Council except in emergent cases.
7. Except, as provided for in Rule 19, the Council shall assemble at such time and place so appointed for the meeting.
8. The Council shall, as far as may be practicable meet on two consecutive days in every fortnight, but any matter of special urgency requiring immediate disposal may be dealt with at an extraordinary meeting which may be called at any time by the Senior Member.
9. Four Members shall constitute a quorum.
10. If a Member is unable to attend any meeting, he shall notify the fact to the Secretary.
11. Except as provided for in Rule 19, the Senior Member shall preside at meetings of the Council.
12. The Presiding Member shall, be responsible for the proper working of the Council and for compliance with these rules and with any other rule or orders which may be passed by the Council from time to time.
13. The business of the Council shall be transacted in

English.

14. At meetings of Council the cases shall be dealt within the order in which they are entered in the Agenda unless the Presiding Member otherwise directs.
15. If any Member desires post-ponement of the consideration of any case, it shall be postponed, unless the Presiding Member, for reasons to be recorded, rules otherwise. All cases so postponed shall be taken up at a subsequent meeting of Council.
16. Any cases not disposed of at a meeting of Council shall be taken up at the next meeting if practicable.
17. Should the Council decide to refer any question to a Select Committee, the Chairman and the other member of the Committee shall be appointed by the Council. The Council may authorise any such Committee to record evidence or to summon representatives of any class or community.
18. In all cases discussed in Council, if there be no difference of opinion, the decision of the Council shall be recorded in the form of a Resolution. If opinion be divided, the question shall be put to vote and the opinion of the majority shall be recorded in the form of a Resolution, the presiding Member being entitled to casting vote in the event of the votes being equally divided, but in all cases where the decision is not unanimous, the opinion of every Member shall be separately recorded.
19. The proceedings of each Council meeting shall be submitted by the Council Secretary to His Highnees for his sanction and no Resolution shall and come to force until and unless it has been sanctioned by His Highness. Should His Highness disapprove of any Council Resolution, he will inform the Senior Member to that effect, and the Members of Council shall attend at such time and place as His Highness may appoint for disussion, in his presence, of the subject involved. His Highness will preside and after the Members have been given the opportunity of explaining their views, His Highness shall there upon decide and announce his decision in Council as to whether the Resolution shall be confirmed or vetoed.

20. All orders of the Council shall be issued in the name of His Highness in Council and shall be signed by the Secretary.
21. The Proceedings of Council shall be reduced to writing and recorded by the Secretary in a Minute Book, which shall be signed by the Presiding Member.
22. In the absence of the Senior Member, the duties assigned to him under these rules shall be discharged by the Member next to him in order of Seniority, who may be present on the occasion.

DUTIES OF THE SECRETARY OF THE COUNCIL

1. to receive all papers submitted to Council;
2. to prepare and circulate the Agenda of Business with the approval of the senior Member and to give due notice of meetings to members;
3. to return cases to Members which have not been submitted in a complete form as laid down in Rules 1 to 4;
4. to record the proceedings of Council;
5. to obtain His Highness sanction to the Resolutions of Council;
6. to issue the Members concerned the Resolutions of Council without loss of time;
7. to furnish each Member with a copy of the printed proceedings;
8. to comply with requisitions made by the Members of Council;
9. to see that reports called for by the Council are promptly sent for, from the Department concerned.
10. to supervise the working of the office and be responsible for the custody and maintenance of records;
11. the Secretary, subject to appeal to Council shall have complete control over his office establishment including the Superintendent, in the matters of appointment, suspension, leave Punishment and promotion;
12. he shall be responsible for the custody of the Seal of the Council and for the maintenance of the usual office registers, a list of pending references and the Minute

Book of the Proceedings of the Council;

13. In all cases in which the Secretary sees no objection, copies of Resolution of the present and the late State Council and His Highness orders if applied for, may be given by him to applicants with reference to Council;
14. The Council Secretary shall be empowered to authorise fluctuating expenditure and to pass travelling allowance bills of his subordinate establishment within the allotments provided.

43. Constitution of the Jammu and Kashmir State Council, 1925.

1. His Highness the Maharaja Bahadur shall preside over the meetings of the Council.
2. The council shall consist of the following Members:

    1. Revenue Member and Army Minister.
    2. Finance and Police Member.
    3. Member for Commerce and Industries.
    4. Home and Law Member.

3. The Council shall have a Secretary and the necessary establishment.
4. The quorum of the Council shall consists of three Members.
5. In the absence of His Highness the Maharaja Bahadur, the Member senior amongst the Members present at the meeting shall preside and the proceedings of such meetings shall be submitted by the Council Secretary to His Highness for his sanction, and no resolution shall come into force until it is sanctioned by His Highness.

    Should His Highness disapprove of any Council Resolution arrived at in his absence he will command the Council Secretary to direct the Members of Council to attend at such time and place as His Highness may appoint for discussion in his presence of the subject involved. His Highness will preside and after the

members have been given the opportunity of explaining their views, His Highness will decide and announce his decision in Council as to whether the Resolution shall be confirmed or vetoed.

6. At any meeting of the Jammu and Kashmir State Council at which His Highness the Maharaja Bahadur is present, if their is a difference of opinion on any question, His Highness may, if he does not agree with the opinion of the majority, exercise his right of veto in the Council. In such a case the determination of the question shall follow the commands of His Highness.
7. With the exception of the subjects enumerated below, which are reserved for the direct commands of His Highness, all matters shall be dealt with by His Highness in Council and the proceedings of the Council shall be submitted to His Highness and to the Members by the Council Secretary for signatures, no Resolution being brought into force until the proceedings have been duly signed and sanctioned.
8. In the Reserved Subjects enumerated below the following procedure shall be adopted:

    1. Military matters shall be submitted to His Highness for His Commands by the Colonel-on-the staff.
    2. Subjects dealt with by the Foreign Department shall be submitted to His Highness for His commands by the foreign Secretary.
    3. Cases connected with Reserved Subjects other than those mentioned in No. 25 shall be submitted to His Highness for His commands by the Member concerned through the State Secretary.
    4. Civil and criminal appeal and applications and cases for confirmation of sentences of death or imprisonment for life shall be submitted by the Law Member after hearing the parties with his opinion through the State Secretary for the comands of His Highness.
    5. Nothing here in contained shall, in any way, derogate from the power of His Highness to refer any matter enumerated in the list of Reserved Subjects.

to Council whenever he may consider it expedient to do so.

RESERVED SUBJECTS

1. Military.
2. Political matters affecting the peace and good Government of the State.
3. Treaties and agreements now in force or which may hereafter be entered into by His Highness with the British Government of his Feudatory Chiefs.
4. The relations between His Highness and the British Governments of his Feudatory Chiefs.
5. Prerogatives and powers of His Highness, and the rights, priveleges, gifts and allowances of the Ruling Family, its relations and connections.
6. Titles, Salutes, Ceremonials, Tours and Special occasions.
7. Frontier Affairs.
8. Residency and Residency Correspondence.
9. Khillats, Tambols, Vartans and Grants at His Highness disposal.
10. Toshakhanas.
11. Rakhs and Game Preservation.
12. State Representatives.
13. Baggikhana, Malmaveshi, Stables, Boats and Cars.
14. Jagirs and Muafis.
15. Devasthans and Dharmarth Trust Fund.

Note :—Petitions submitted direct to His Highness shall be referred by the State Secretary to the Member-in-Charge of the Department concerned for disposal or report as the case may require.

POWERS OF THE COUNCIL

I. Subject to the sanction of His Highness, the Council shall be the final authority in all matters which cannot be dealt with finally by any Member or any other officer, by virtue of powers delegated to him under any law,

rule, regulation, order, resolution or practice sanctioned before the constitution of the Council, or by the Council or sanctioned in future by the Council with the exception of cases relating to the subjects reserved for the commands of His Highness under the title of Reserved Subjects.

2. The Council shall, amongst other things, be empowered:

(a) to see that the Annual Budget is framed and submitted to Council six weeks before commencement of the next Financial Year;
(b) to pass the Annual Budget;
(c) to sanction the reappropriation of any expenditure from one Head to another of the General Budget, over and above the powers delegated to Members;
(d) to sanction all extra-grants not provided for in the Budget;
(e) to sanction leave to officers, over and above the powers delegated to Members;
(f) to pass progress and other Reports submitted by members;
(g) to settle boundary disputes and questions relating to the Settlement Department, over and above the power delegated to the Member concerned;
(h) to sanction suspensions of remissions of Revenue over and above the power delegated to Member concerned;
(i) to issue instructions for the more efficient organisation and despatch of business in the various deparments of the State and to make rules to regulate the proceedings of any department;
(j) to settle all matters pertaining to more than one department;
(k) to revise any order passed by the Member-in-Charge of a department;
(l) to call for and modify any proceedings in any department of the Administration and to stay the execution of any order pending the final decision of Council; and

(m) to sanction scheme of general reform, no such scheme being introduced without the previous sanction of Council.

As regards Revenue Appeals, applications for Review or Revision, the opinion of the Law Member shall, where he agrees with Revenue Member, be treated as the decision of the State Council, and the Secretary State Council shall inform the Revenue Member accordingly, to enable him to take action accordingly. In cases in which the Law Member differs from the Revenue Member, the papers shall be submitted to the Council by the Secretary of Council with a detailed note for orders.

Note :—Reserved subjects shall be excluded from the operation of clauses C to H both inclusive above.

DISTRIBUTION OF PORTFOLIOS

The following matters shall be under the direct control of His Highness the Maharaja Bahadur:

1. Military.
2. Foreign.
3. General Supervision.
4. Political Matters affecting the peace and good Government of the State.

REVENUE MEMBER

1. Land Revenue.
2. Jagirs and Muafis.
3. Revenue Settlement.
4. Civil Veterinary Department.
5. Devasthans and Dharmarth Trust Fund.
6. Road cess, Patwar Fund and Chowkidars funds.
7. State property in British India.

HOME AND LAW MEMBER

(a) Home Member.

1. Education.
2. Medical and Jails.
3. Municipalities.
4. Research and Libraries.
5. Archeology and Museums.
6. Manageries.
7. Meterological Department.
8. Telegraph Department.
9. Telephone Department.

(b) Law Member:

1. Judicial Department and Legislation.
2. Civil and criminal appeal and applications and cases for confirmation of sentences of death or imprisonment for life.
3. Tasdiqi- i- wasiqajat on which His Highness the Maharaja Bahadur commands are required by law.

FINANCE AND POLICE MEMBER

1. Finance.
2. Treasuries.
3. Accounts,
4. Audit.
5. Stamps.
6. Kashmir Valley Food Control.
7. Police.
8. Police special Reports, such as Accidents, Riots, Arrival and suspicious movements or actions of visitors.
9. Co-operative Credit Societies.

MEMBER FOR COMMERCE AND INDUSTRIES

1. Forests.
2. Sericulture, Silk Weaving and Mulbery Culture.
3. Mineral Survey.
4. Commerce and Industries.
5. Excise.
6. Customs.

7. Stationery.
8. Industrial Education.
9. Printing Presses.
10. Agriculture and Horticulture.

PUBLIC WORKS MEMBER

1. Irrigation.
2. Roads and Buildings.
3. Electrical Department.
4. Mechanical Department.

RULES FOR CONDUCT OF BUSINESS IN THE COUNCIL

The Rules for the conduct of business in the Council shall be as follows:

1. Every case to be submitted to Council shall be sent to the Council Secretary by the Member concerned. The Member concerned shall see that a complete Precis of the case is drawn up, and that his own opinion andthe opinions of the Head of the Department or Heads of Departments subordinate to him and affected by the question at issue are duly recorded.
2. In every case in which financial issues are involved, the opinion of the Finance Member shall be obtained by the Members concerned and submitted with the case to Council.
3. When it is proposed to sanction, amend, or repeal any regulation, rule, law, order or notification the opinion of the Law Member shall be obtained by the Members concerned and submitted with the case to Council.
4. In every case which directly affects more than one Member of Council, the Member submitting the case shall see that the opinion of the other Member or Members directly concerned and the opinion of the Heads of the Department affected are duly obtained and recorded before the case is referred to Council.
5. The Council Secreary shall prepare, in the order of the receipt, a list of all cases received from Members in

the prescried and complete form, he shall then draw up. the Agenda for the Council Meeting: as a general rule, no case shall be entered in the Agenda unless it has been received at least four clear days before the next meeting is due to take place.

6. When the Agenda has been drawn up, copies shall be submitted to His Highness and forwarded to every Member at least 48 hours before the time fixed for the Meeting of Council except in emergent cases.
7. Except as provided for in Rule 16, the Council shall assemble as such time and place as may be appointed by His Highness the Maharaja Bahadur or the Presiding Member. The Secretary shall inform all Members of the time and place so appointed for the meeting.
8. The Council shall, as far as may be practicable meet on two consecutive days in every fortnight, but any matter of special urgency requiring immediate disposal may be dealt with at an extraordinary meeting which may be called at any time by His Highness the Maharaja Bahadur in the manner provided in Article 20.
9. Three Members shall constitute a quorum.
10. If a Member is unable to attend any meeting, he shall notify the fact in writing to the Secretary.
11. The business of the Council shall be transacted in English.
12. If any Member desires postponement of the consideration of any case, it shall be postponed, unless His Highness the Maharaja Bahadur or the Presiding Member, for reasons to be recorded, rules otherwise. All cases so postponed shall be taken up at the subsequent meeting of Council if practicable.
13. Any cases not disposed of at a meeting of Council shall be taken up at the next meeting if practicable.
14. Should the Council decide to refer any question to a Select Committee, the Chairman and the other Members of the Committee shall be appointed by the Council. The Council may authorise any such Committee to record evidence or to summon representatives of any class or community.
15. In all cases discussed in the Council, if there be no

difference of opinion, the decision of the Council shall be recorded in the form of a Resolution. If opinion be divided, the question shall be put to the vote and the opinion of majority shall be recorded in the form of resolution, the Presiding Member being entitled to a casting vote in the event of the votes being equally divided, but in all cases where the decision is not unanimous, the opinion of every Member shall be separately recorded.

16. The proceedings of such Council meeting as are held in the absence of His Highness the Maharaja Bahadur shall be submitted by the Council Secretary to His Highness for his sanction and no resolution shall come into force until and unless it has been sanctioned by his Highness. Should His Highness disapprove of any Council Resolution arrived at during his absence he will command the Council Secretary to direct the Members of Council to attend at such time and place as his Highness may appoint for discussion in his presence of the subject involved. His Highness will preside and after the Member have been given the opportunity of explaining their views, His Highness will announce his decision in Council as to whether the Resolution shall be confirmed or disallowed.

17. All orders of the Council shall be issued in the name of His Highness in Council and shall be signed by the Secretary.

18. The proceedings of the Council shall be reduced to writing in the form of proceedings which shall be signed by all the Members present at the meeting concerned and shall also be recorded by the Secretary in a Minute Book, which shall be signed by His Highness the Maharaja Bahadur.

19. In the absence of His Highness the Maharaja Bahadur the duties assigned to him under these rules shall be discharged by the Member Senior amongst the Members present at the meeting subject to the provisions of Article 16.

20. Under orders of His Highness the Maharaja Bahadur any papers requiring immediate disposal shall be

circulated by the Council Secretary amongst the Men bers of the State Council for their opinion, on receiț of which the case shall be laid before His Highness fc commands, which will be communicated to th Member concerned. Such cases shall in due course b recorded in the Council proceedings in a complet form. No member shall retain a case so circulated fo more than 2 days.

Note :— All the Members of Council and Secretaries atten ding Council meetings, shall do so in blacl Achkans or black morning or frock coats.

DUTIES OF THE SECRETARY OF THE COUNCIL

1. to receive all papers submitted to the Council;
2. to prepare and circulate the Agenda of Business and to give due notice of meeting to Members;
3. to return cases to Members which have not been submitted in a complete form as laid down in Rules 1 to 4;
4. to record the proceedings of Council;
5. to obtain His Highness sanction to the Resolutions of such Council meetings as are held in his Highness absence;
6. to issue to the Members concerned the Resolutions of Council without loss of time;
7. to furnish each Member with a copy of the printed proceedings;
8. to comply with requisitions made by the Members of the Council;
9. to see that reports called for by the Council are promptly sent for from the Department concerned;
10. to supervise the working of the office and be responsible for the custody and maintenance of records;
11. the Secretary, subject to appeal to Council shall have complete control over his office establishment including the superintendent, in the matters of appointment, suspension, leave, punishment and promotion;
12. he shall be responsible for the custody of the seal of the

Council and for the maintenance of the usual office registers, a list of pending references and the Minute Book of proceedings of the Council;

13. in all cases in which the Secretary sees no objection, copies of Resolution of the present and the late State Council and of His Highness orders passed in the interim between the abolition of the old Council in 1905 and the constitution of the new Council in January in 1922 if applied for, may be given by him to applicants without reference to Council;
14. The Council Secretary shall be empowered to authorise fluctuating expenditure and to pass travelling allowance bills of his subordinate establishment within the allotments provided;
15. The Council Secretary shall dispose of notices served on the Government under Section 79, 80, 82 (i), 89 (i) order XXVII Rules 2,3,4,5 and 8 order XLI, Rule 7 and appendix XIX (2) of the Civil procedure code, vide Council Resolution No. 72 dated the 4th September 1922.

44. State Subject Definition Notification dated the 20th April, 1927.

No. I-L/84.—The following definition of the term "State Subject" has been sanctioned by his Highnees the Maharaja Bahadur (vide Private Secretary's letter No. 2354, dated the 31st January, 1927 to the Revenue Member of Council) and is hereby promulgated for general information.

The term State Subject means and includes—

Class I.—All persons born and residing within the State before the commencement of the reign of His Highness the late Maharaja Ghulab Singh Sahib Bahadur, and also persons who settled the rein before the commencement of samvat year 1942, and have since been permanently residing therein.

Class II.—All persons other than those belonging to Class I who settled within the State before the close of samvat year 1968, and have since permanently resided and acquired immovable property therein.

Class III.—All persons, other than those belonging to Classes

I and II permanently residing within the State, who have acquired under a rayatnama any immovable property therein or who may hereafter acquire such property under an ijazatnama and may execute a rayatnama after ten years continuous residence therein.

Class IV.—Companies which have been registered as such within the State and which, being companies in which the Government are financially interested or as to the economic benefit to the State or to the financial stability of which the Government are satisfied, have by a special order of His Highness been declared to be State subjects.

Note I.—In matters of grants of the State scholarships, State lands for agricultural and house building purposes and recruitment to State service, State subjects of Class I should receive preference over other classes and those of Class II, over Class III, subject, however, to the order dated 31st January, 1927 of his Highness the Maharaja Bahadur regarding employment of hereditary State Subjects in Government service.

Note II.—The descendants of the persons who have secured the status of any class of the State Subjects will be entitled to become the State Subject of the same class. For example, if A is declared a State Subject of Class II his sons and grand sons will ipso facto acquire the status of the same Class (II) and not of Class I.

Note III.—The wife or a widow of a State Subject of any class shall acquire the status of her husband as State Subject of the same Class as her husband, so long as she resides in the State and does not leave the State for permanent residence outside the State.

Note IV.—For the purpose of the interpretation of the term 'State Subject' either with reference to any law for the time being in force or otherwise, the definition given in this Notification as amended up to date shall be read as if such amended definition existed in this Notification as originally issued.

NOTIFICATION

(Issued by order of His Highness the Maharaja Bahadur dated Srinagar, the 27th June 1932, (14th Har, 1989, published in Government Gazette dated 24th Har, 1989).

No.13L/1989.—Whereas it is necessary to determine the status of Jammu and Kashmir State Subjects in foreign territories and to inform the Government of Foreign States as to the position of their nationals in this state, it is hereby commanded and notified for public information, as follows :

1. That all emigrants from the Jammu and Kashmir State to foreign territories shall be considered State Subjects and also the descendants of these emigrants born aboard for two generations.

Provided that, these nationals of the Jammu and Kashmir State shall not be entitled to claim the internal rights granted to subjects of this State by the laws, unless they fulfil the conditions laid down by those laws and rules for the specific purposes mentioned therein.

2. The foreign nationals residing in the State of Jammu and Kashmir shall not acquire the nationality of the Jammu and Kashmir State until after the age of 18 on purchasing immovable property under permission of an ijazatnama and on obtaining a rayatnama after ten years continuous residence in the Jammu and Kashmir State as laid down in Notification No.-I-L. of 1984, dated 20th April, 1927.

3. Certificates of nationality of the Jammu and Kashmir State may, on application, be granted by the Minister-in Charge of the Political Department in accordance with the provision of section I of this Notification.

45. Jammu and Kashmir Government Notification order No.1, 26th March 1928

WHEREAS it is expedient to establish a High Court of Judicature for the Jammu and Kashmir State, His Highness the Maharaja Bahadur is pleased to command as follows:

1. That with effect from the fifteenth day of Baisakh Samvat One thousand nine hundred and eighty five, the High Court of Judicature Jammu and Kashmir State shall be constituted and shall consist of a Chief Justice and two or more Judges, as His Highness the Maharaja Bahadur may from time to time, think fit to appoint. One of the Judges shall have revenue experience and

shall be styled Judge High Court and Revenue Commissoner.

The Chief Justice and every Judge of the High Court of Judicature shall hold office during His Highness the Maharaja Bahadur's pleasure.

2. The said Court shall henceforth be styled the High Court of judicature Jammu and Kashmir State.

3. Oath of Offlee

The Chief Justice and every Judge of the High Court of Judicature previously to entering upon the execution of the duties of their respective offices shall make and subscribe the following declaration before His Highness the Maharaja Bahadur, or such officer as may be appointed in this behalf:

"I .....appointed Chief Justice (or a Judge) of the High Court of Judicature Jammu and Kashmir State, do solemnly declare that I will administer Justice according to the law and usage of the Realm, without fear or favour, affection or ill-will".

4. Seal

The High Court of Judicature shall have and use, as occasion may require, a seal bearing a device and impression of the Jammu and Kashmir Court of Arms with an exergue or label surrounding the same, with this inscription, "The Seal of the High Court of Judicature Jammu and Kashmir."

The said seal shall be delivered to and kept in the custody of the Chief Justice or of an officer of the court from time to time nominated by the Chief Justice.

5. Writs etc.

All writs, summons, precepts, rules, orders and other mendatory processes to be used, or issued or awarded by the High Court of Judicature shall run and be in the

name and style of His Highness the Maharaja Bahadur and shall be sealed with the seal of the Court.

6. Original Jurisdiction.

(a) The High Court of Judicature shall have jurisdiction to hear and determine any original proceeding, or any suit of which the value is not less than Rs. 10,000 and notwithstanding auything contained in Section 15 of the Code of Civil Procedure of Samvat Year 1977, every such suit or proceeding shall be instituted in the High Court of Judicature.

Provided that nothing in this Clause shall affect the Provisions of Section 24 of the Code of Civil Procedure of Samvat year 1977, in respect of a suit, appeal, or other proceeding pending before a court subordinate to it to try or dispose of the same.

(b) The High Court of Judicature shall be deemed for the purposes of all enactments, for the time being in force, to be the highest Civil Court of appeal and revision.

(c) The High Court of Judicature shall be the highest court of Criminal appeal.

(d) The High Court of Judicature shall be empowered to hear and decide such revenue appeals as may be specified by general or special orders of His Highness in this behalf and shall be deemed to be the highest court of revenue appeal.

7. Jurisdiction by Judges of the Court

(a) Except as otherwise provided by any enactment for the time being in force, and subject to any rules made under this order, with the sanction of His Highness the Maharaja Bahadur, the jurisdiction of the High Court of Judicature may be exercised by a single Judge of the Court or by a bench of two or more Judges of the Court.

(b) Revenue appeals and revisions shall first be heard by the Revenue Commissioner sitting alone and appeals, against his decisions shall lie to a bench consisting of two other Judges of the Court.

(c) Subject to the provisions of clause (b) above, the Chief Justice shall determine which judge in each case shall sit alone, and which Judges of the Court shall constitute a bench.

8. Appeals from Civil Jurisdiction

Except as otherwise provided by any enactment for the time being in force, an appeal from any original decree, or from any order against which an appeal is permitted by any law for the time being in force, made by a single Judge of the High Court of Judicature shall lie to a bench consisting of two other judges of the Court.

9. Rule of decision when Judges differ

(a) When there is a difference of opinion among the Judges composing any bench of the High Court of Judicature the decision shall be in accordance with the opinion of the majority of the Judges.

(b) if there is no such majority then:

(i) If the bench is a full bench, the decision shall be in accordance with the decision of the Senior Judge, and

(ii) in other cases the bench before which the difference has arisen shall either refer the question to a full bench, or refer the whole case for decision to the full bench.

10. Power to refer question to a full bench or a bench

(a) Any single Judge and any bench of two Judges of the High Court of Judicature, not being a full bench, may, in any case, refer for the decision of

a full bench any question of law, or custom having the force of law, or of the construction of any document, or of the admissibility of any evidence, arising before the Judge or the bench and shall dispose of the case in accordance with the decision of the full bench.

(b) Any Judge of the High Court of Judicature may if he thinks fit, refer any appeal or application coming before him for hearing as a single Judge to a bench of two Judges for decision.

11. Superintendence and control of subordinate courts

(a) Subject to such rules and regulations as His Highness the Maharaja Bahadur may be pleased to frame in this behalf, the general superintendence and control over all courts shall be vested in, any they shall be subordinate to, the High Court of Judicature.

(b) The Chief Justice or a Judge of the High Court of Judicature appointed by him, shall from time to time visit and inspect the proceedings of the courts subordinate to the High Court of Judicature and shall give such directions in matters not provided for by law as may be necessary to secure the due administration of Justice.

12. Ministerial Officers

(a) The High Court of Judicature may, subject to the sanction of His Highness the Maharaja Bahadur, and on such terms as to salary, allowance, promotion, leave, suspension and dismissal, as may be sanctioned by His Highness the Maharaja Bahadur, appoint a Registrar, a Deputy Registrar, and such other Ministerial officers as may be necessary for the administration of justice by the Court and for exercise and performance of the powers conferred, and duties imposed on it by this order, or by any other enactment for the time being a force.

(b) The Officers so appointed shall exercise such powers and discharge such duties as the High Court of Judicature may direct.

(c) The High Court of Judicature may delegate to the Registrar, the Deputy Registrar, or both, such judicial, quasi-judicial or administrative powers as it may deem fit.

13. Appointments and powers of subordinate Judicial Officers

(a) The appointments of the District and Sessions Judges, Subordinate Judges and Munsiffs shall be made by His Highness the Maharaja Bahadur on recommendation of the High Court of Judicature.

(b) The High Court of Judicature shall have power to transfer and grant leave to subordinate Judges and Munsiffs.

(c) The High Court of Judicature may, subject to the sanction of His Highness the Maharaja Bahadur, grant leave to, and transfer District and Sessions Judges and may confer civil and criminal powers according to law on District and Sessions Judges, subordinate Judges, Munsiffs, District Magistrates, Sub-Divisional Magistrates and other officers exercising judicial functions.

(d) The High Court of Judicature shall have no independent power of punishment, such as reduction, suspension and dismissal of judicial officers, but it shall have the powers to enquire into cases of misconduct and submit its recommendations for the orders of His Highness the Maharaja Bahadur.

14. Place of sitting

The usual places of sitting of the High Court of Judicature shall be Jammu and Srinagar.

15. Special commissions and circuit

Whenever it appears to the Chief Justice convenient

that the jurisdiction and power vested in the High Court of Judicature by this order or by any other law for the time being in force, should be exercised in any place within the jurisdiction of any court subject to the superintendence of the High Court of Judicature other than the usual places of sitting of the High Court of Judicature or at several such places by way of circuit, one or more Judges of the High Court of Judicature shall hold court at such place or places.

16. Requisitions by His Highness the Maharaja Bahadur

The High Court of Judicature shall comply with such requisitions, as may, from time to time, be mabe under the commands of His Highness the Maharaja Bahadur for records, returns and statements.

17. Confirmation of sentences

Cases requiring confirmation of sentences of death or of imprisonment for life shall be submitted to His Highness the Maharaja Bahadur for confirmation in accordance with the provision of the Code of Criminal procedure.

18. Power to make rules

(a) The High Court of Judicature, may with the sanction of His Highness the Maharaja Bahadur, and after previous publication and consistently with the provisions of the codes of civil and criminal procedure and of any other law in force for the time being, make rules.

(i) to regulate the practice of the court.

(ii) to regulate the practice of the courts subordinate thereto.

(iii) to provide for the forms to be used in the High Court of judicature and the courts subordinate

thereto for such proceedings, books, entries, statistics, and accounts as it thinks fit.

(iv) to provide for the inspection of courts subordinate thereto and the supervision of the work thereof.

(v) to regulate all such matters as it may think fit with a view to promote the efficiency of the judicial and ministerial officers of the High Court of Judicature and of the courts subordinate thereto, and the maintaining of proper discipline among those officers.

(d) Such rules shall be made with the approval of a majority of the Judges of the Court.

19. Admission of Advocates, etc.

(a) The High Court of Judicature shall have the power to approve, admit and enrol advocates, vakils and attorneys-at-law subject to a limit fixed by His Highness the Maharaja Bahadur.

(b) The High Court of Judicature shall have power to make rules, from time to time, with the sanction of His Highness the Maharaja Bahadur, for the qualification and admission of proper persons to be advocates,vakils and attorneys-at-law of the High Court of Judicature and it shall also have the power to remove or suspend from practice, on reasonable clause, the said advocates, vakils and attorneys-at-law

20. Contempt

(a) All appeals, revision and other judicial proceedings pending on the civil or criminal side of the High Court on the date on which this order comes into force, shall be continued, heard and determined in the High Court of Judicature for the Jammu and Kashmir State according to law.

(b) All appeals and revisions against the decrees and orders of the High Court of which any competent

authority may be seized on the date on which this order comes into force, shall be transferred to the High Court of Judicature as constituted by this order for final disposal.

(c) All appeals, revisions and reviews against the judgements and orders of the High Court which can and may be duly filed on and after the date on which this order comes into force shall be entertained and finally disposed of by the High Court of Judicature.

(d) Revenue appeals and revisions pending before His Highness or in the Court of the Revenue Minister may, by His Highness' general or special orders, be transferred for decision to the High Court of Judicature.

(e) All pending applications for the review of the orders of His Highness the Maharaja Bahadur in appeal or revision against the orders of the High Court or of the Revenue Minister or such applications as may be presented hereafter till this order comes into force, will be dealt with and disposed of as heretofore.

(f) No Judge of the High Court of Judicature sitting in a full bench thereof, notwithstanding anything to the contrary provided anywhere, shall by reason of his having decided or otherwise dealt with any case referred to in clauses (a), (b), (c), (d) and (e) above, be barred from hearing and deciding the same.

22. Consequential changes

Consequent on the promulgation of this order, all the changes required to bring the existing laws, regulations or enactments into conformity with the provisions of this order shall be made at as early a date as possible with the sanction of His Highness the Maharaja Bahadur.

23. Royal prerogative.

(a) Nothing herein contained and nothing contained in any other law for the time being in force, shall be deemed to affect in any way, or derogate from the inherent power and prerogative of His Highness the Maharaja Bahadur or to affect in any way his prerogative of mercy and pardon, or his power of remitting, commuting or reducing sentences conditionally or otherwise, or to bar the full and unqualified exercise of His Highness the Maharaja Bahadur's pleasure in calling for the record of any case or proceeding whether pending before or decided by, the High Court of Judicature or any court subordinate thereto, or to pass such orders thereon as may be in accordance with the law and usage of the Realm and consonant with the dictates of justice, equity and good conscience.

(b) Except as provided by this order, there shall be no appeal or revision against the decree and orders of the High Court of Judicature for Jammu and Kashmir State.

46. Statement of Maharaja Hari Singh on Butler Committee. (*Extract*)

They (Princes) had imagined a committee different alike in composition and functions from that which ultimately materalised. It was expected that round a nucleus of English statesmen of reputation, there would be grouped representatives of the Government of India, of British India and of the Indian States together with financial, constitutional and political experts. Two things were uppermost in their minds; firstly, they had become painfully conscious that what was called political practice whitted away rights, which they believed to have been safeguarded by treaties; secondly, they found their position was one of considerable uncertainty, not merely in regard to their future relations with a self governing British India, but also in

regard to their present relation with the Government of India. They were anxious to find out precisely where they stood, where their rights began and those of the Paramount power ended so that they might take stock of the part they were called upon to play in greater India which they saw shaping before their eyes, but the Committee from the very nature of its personnel and restricted lines of reference could not conduct an examination satisfactorily. The Committee by its own admission was not a judicial tribunal. This was conclusive evidence that the State could not receive at its hands that kind of award which was their principal reason for asking for an enquiry at all."

47. Statement of Maharaja Hari Singh, Round Table.
(*Extract*)

"Allied by treaty with the British Crown and within our territories, independent rulers, we have come with a full sense of responsibilities to our State and all India. As the allies of British we stand solidly by the British connection. As Indians and loyal to the land of our birth, we stand as solidly as the rest of our countrymen for our land's enjoyment of a position of honour and equality in the British Commonwealth. Our desire to cooperate to the best of our ability with all sections of the Conference is genuine, as also is our determination to base our cooperation upon the realities of the present situation.

Neither England nor India can afford to see this conference end in failure. We must resolve to succeed. Difficulties shall not be insuperable. We must exercise patience, tact and forbearance and be inspired by mutual understanding and goodwill and we must give and take. The task is gigantic. In case of no people would such an aim as ours be easy to accomplish. In case of India, complexity of factors is unique but by the grace of God and with good will and sympathy on both sides difficulties shall be surmounted and with the words of the King Emperor still ringing in our ears, we Princes affirm that the Conference shall not fail through any fault of ours."

48. Presidential Address of Dr. Sir Muhammad Iqbal deliverd at the Allahabad Session of the All India Muslim League, December 1930.

(*Extract*)

What is the problem and its implications? If religion a private affair ? Would you like to see Islam, as a moral and political ideal, meeting the same fate in the world of Islam as Christianity has already met in Europe ? Is it possible to retain Islam as an ethical ideal and to reject it as a polity in favour of national politics, in which religious attitude is not permitted to play any part ? This question becomes of special importance in India where the Muslims happen to be in a minority. The proposition that religion is a private individual experience is not surprising on the lips of a European. In Europe the conception of Christianity as a monastic order, renouncing the world of matter and fixing its gaze entirely on the world or spirit, led by a logical process of thought, to the view embodied in this proposition. The nature of the Prophet's religious experience, as disclosed in the Quran, however, is wholly different. It is not more experience in the sense of a purely biological event happenning inside the experiment and necessitating no reactions on his social environment. It is individual experience creative of a social order. Its immediate outcome is the fundamentals of a polity with implicit legal concepts whose civic significance cannot be belittled merely because their origin is revelational. The reilgious ideal of Islam, therefore, is organically related to the social order which it has created. The rejection of the one will eventually involve the rejection of the other. Therefore, the construction of a polity on national lines, if it means a displacement of the Islamic principle of solidarity is simply unthinkable to a Muslim. This is a matter which at the present moment directly concerns the Muslim of India. "Man", says Renan, "is enslaved neither by his race, nor by his religion, nor by the course of rivers nor by the directions of mountain ranges. A great aggregation of men, sane of mind and warm of heart, creates a moral consciousness which is called a nation".

Such a formation is quite possible, though it involves the long and arduous process of practically remaking men and

furnshing them with a fresh emotional equipment. It might have been a fact in India if the teaching of Kabir and Divine Faith of Akbar had seized the imagination of the masses of this country. Experience, however, shows that the various caste-units and religious units in India have shown no inclination to sink their respective individualities in a larger whole. Each group is intensely jealous of it collective existence. The formation of the kind of moral consciousness which constitutes the essence of a nation in Renan's sense demands a price which the people of India are not prepared to pay. The unity of an Indian nation, therefore, must be sought, not in the negation, but in the mutual harmony and cooperation of the many. True statesmanship cannot ignore facts, however, unpleasant they may be. The only practical course is not to assume the existence of a State of things which does not exist, but to recognise facts as they are and to exploit them to our greatest advantage. And it is on the discovery of India Unity in this direction that the fate of India as well as of Asia really depends. India is Asia in miniature. Part of her people have cultural affinities with nations in the east and part with nations in the middle and west of Asia. If an effective principle of cooperation is discovered in India, it will bring peace and mutual goodwill to this ancient land which has suffered so long, more because of her situation in historic space than because of any inherent incapacity of her people. And it will at the same time solve the entire political problem of Asia.

It is, however, painful to observe that our attempts to discover such a principle of internal harmony have so far failed.

Why have they failed ? Perhaps, we suspect each other's intentions and inwardly aim at dominating each other. Perhaps, in the higher interests of mutual cooperation, we cannot afford to part with the monopolies which circumstances have placed in our hands, and conceal our egoism under the cloak of a nationalism, outwardly stimulating a large-hearted partriotism but inwardly as narrowminded as a caste or a tribe. Perhaps, we are unwilling to recognise that each group has a right to free development according to its own cultural traditions. But whatever may be the cause of our failure, I still feel hopeful. Events seem to be tending in the direction of some sort of internal harmony. And as far as I have been able

to read the Muslim mind, I have no hesitation in declaring that if the principle that the Indian Muslims entitled to full and free development on the lines of his own culture and tradition in his own Indian homelands is recognised as the basis of a permanent communal settlement, he will be ready to stake his all for the freedom of India. The principle that each group is entited to free development on its own lines is not inspired by any feeling of narrow communalism. There are communalisms and communalisms. A community which is inspired by any feeling of illwill towards other communities is low and ignoble. I entertain the highest respect for the customs, laws, religious and social institutions of other communities. Nay, it is my duty, according to the teaching of the Quran, even to defend their places of worship if need be. Yet I have the communal group which is the source of my life and behaviour; and which has formed me what I am by giving me its religion, its literature, its thought, its culture, and thereby recreating its whole past, as a living operative factor, in my present consciousness. Even the authors of the Nehru Report recognise the value of this higher aspect of communalism. While discussing the separation of Sind they say :

'To say from the larger viewpoint of nationalism that no communal Provinces should be created is, in a way, equivalent to saying from the still wider international viewopoint that here should be no separate nations. Both these statements have a measure of truth in them. But the staunchest internationalists recognises that without the fullest national autonomy it is extraordinarily difficult to create the international State. So also, without the fullest cultural autonomy, and communalism in its better aspect is culture it will be difficult to create a harmonious nation.'

Communalism, in its higher aspect, then, is indispensable to the formation of a harmonious whole in a country like India. The units of Indian society are not territorial as in European countries. India is a continent of human groups belonging to different races, speaking different languages and professing different religions. Their behaviour is not at all determined by a common race, consciousness. Even the Hindus do not form a homogeneous group. The principle of European democracy cannot be applied to India without recognizing the fact of com-

munal groups. The Muslim demand for the creation of a Muslim India within India is, therefore, perfectly justified. The resolution of the All-parties Muslim Conference at Delhi is, to my mind, wholly inspired by this noble ideal of a harmonious whole which, instead of stifling the respective individualities of its component wholes, affords them chances of fully working out the possibilities that may be latent in them. And I have no doubt that this house will emphatically endorse the Muslim demands embodied in this resolution. Personally I would go further than the demands embodied in it. I would like to see the Punjab, North-West Frontier Province, Sind and Baluchistan amalgamated into a single state. Self-Government within the British Empire, or without the British Empire, the formation of a consolidated North-West Indian Muslim State appears to me to be the final destiny of the Muslim, at least of North-West India. The proposal was put forward before the Nehru Committee. They rejected it on the ground that, if carried into effect, it would give a very unwidely state. This is true in so far as the area is concerned; in point of population the State contemplated by the proposal would be much less than some of the present Indian Provinces. The exclusion of Ambala Division and perhaps of some Districts where non-muslims predominate will make it less extensive and more Muslim in population so that the exclusion suggested will enable the consolidated state to give a more effective protection to non-Muslim Minorities within its area. The idea need need not alarm the Hindus or the British. India is the greatest Muslim country in the world. The life of Islam as a cultural force in this country very largely depends on its centralization in a specified territory.

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It is clear that in view of India's infinite varieiy in climates, races, languages, creeds and social systems, the creation of autonomous States, based on the unity of languages race, history, religion and identify of economic interests, is the only possible way to secure a stable constitutional structure in India. The conception of federation underlying the Simon Report

necessitates the abolition of the Central Legislative Assembly as a popular assembly, and makes it an assembly of the representatives of federal states. It further demands a redistribution of territory on the lines which I have indicated. And the report does recommend both. I give my wholehearted support to this view of the matter, and venture to suggest that the redistribution recommended in the Simon Reports must fulfil two conditions. It must procede the introduction of the new Constitution and must be so devised as to finally solve the communal problem. Proper redistribution will make the question of joint and separate electorates automatically disappear from the constitutional controversy of India. It is the present structure of the provinces that is largely resposible for this controversy. The Hindu thinks that separate electorates are contrary to the spirit of true nationalism, because he understands the word nation to mean a kind of universal amalgamation in which no communal entity ought to retain its private individuality such a state of things, however, does not exist. Nor is it desirable that it should exist. India is a land of racial and religious variety. Add to this the general economic inferiority of the Muslims, their enormous debt, especially in the Punjab and their insufficient majorities in some of the provinces as at present constituted, and you will begin to see clearly the meaning of our anxiety to retain separate electorates cannot secure adequate representation of all interests, and must inevitably lead to the creation of an oligarchy. The Muslims of India can have no objection to purely territorial electorates if Provinces are demarcated so as to secure comparatively homogeneous communities possessing linguistic racial, cultural and religious unity.

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To my mind a unitary form of government is simply unthinkable in a self-governing India. What is called "residuary power" must be left entirely to self-gaverning states, the Central Federal States exercising only those powers which are expressly vested in it by the free consent of federal states. I would never advise the Muslim of India to agree to a system, whether of

British or of India origin, which virtually negatives the principles of true federation or fails to recognize them as a distinct political entity.

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I have no doubt that if a Federal Government is established, Muslims will willingly agree, for purposes of India's defence, to the creation of a neutral military and naval force. Such a neutral military force for the defence of India was a reality in the days of Mughal rule. Indeed in the time of Akbar the Indian frontier was, on the whole, defended by armies officered by Hindu generals. I am prefectly sure tha tthe scheme of a neutral Indian army, based on a federated India will intensify Muslim patriotic feeling, and finally set at rest the suspicion, if any of Indian Muslim joining Muslims from beyond the frontier in the event of an invasion.

I have thus tried briefly to indicate the way in which the Muslims of India ought in my opinion to look at the two most important constitutional problems of India. A redistribution of British India, calculated to secure a permanent solution of the communal problem is ignored then I support, as emphatically as possible, the Muslim demands repeatedly urged by the All India Muslim League and All India Muslim Conference. The Muslims of India cannot agree to any canstitutional changes which effect their majority rights, to be secured by separates electorates, in the Punjab and Bengal or fail to guarantee them 33 per cent representation in any Central Legislature.

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No Muslim politician should be sensitive to the taunt embodied in that propaganda word-communalism-expressly devised to exploit what the Prime Minister calls British democratic sentiments and to mislead England into assuming a State of things which does not really exist in India. Great interests are at stake we are seventy millions and far more homogeneous than any other people in India. Indeed the Muslims of India

are the only Indian people who can fitly be described as a nation in the modern sense of the word. The Hindus, though ahead of us in almost all respects, have not yet been able to achieve the kind of homogeneity which is necessary for a nation, and which Islam has given you as a free gift. No doubt they are anxious to become a nation, but the process of becoming a nation is a kind of travail, and in the case of Hindu India, involves a complete overhauling of her social structure. Nor should the Muslim leaders and politicians allow themselves to be carried away by the subtle but fallacious argument that Turkey and Pursia and other Muslim countries are progressing on national, i.e. territorial, lines. The Muslims of India are differently situated. The countries of Islam outside India are practically wholly Muslim in population. The minorities there belong, in the language of the Quran, to the people of the book. There are no social barriers between Muslims and the "People of the Book". A Jew or a Christian or a Zoroastrian does not pollute the food of a Muslim by touching it, and the law of Islam allows inter-marriage with the "people of the Book". Indeed the first practical step that Islam took towards the realization of a final combination of humanity was to call upon people possessing practically the same ethical ideal to come forward and combine. The Quran declares, "O people of the Book; Come, let us join together on the "word" (Unity of God), that is common to us all". The word of Islam and Christianity, and European arression in its various forms, could not allow the infinite meaning of this verse, to work itself out in the world of Islam. Today it is being gradually realized in the countries of Islam in the shape of what is called Muslim Nationalism.

49. Proclamation of Maharaja Hari Singh July 9, 1931.

TO MY BELOVED PEOPLE

From time immemorial all communities within the State have been living on terms of closest harmony and friendship with each other and I used to take the greatest pride in the

fact that we were happily from all communal strife. I am, therefore, greatiy pained to see that quite recently owing to external influences a changed and regrettable attitude is observable in certain sections in the cities of Jammu and Srinagar. This is greatly to be deplored. Two unfortunate incidents which occurred recently in Jammu city and which could not by any stretch of imagination be associated with any action or policy of my Government and for which the responsibility rested solely on the persons involved have been seized upon and widely misrepresented inside and outside the State so as to convey to those who are not in a position to know the true facts that the policy of my Government is such that Islam is in danger. It is not my intention to deal with the details of these incidents in this message as they are being dealt with separately. So far I have preferred that my Government be judged by its actions alone. But numerous representations from my loyal subjects of all sects and creeds have reached me within the last few days to the effect that such agitation even though at present it finds no response genefally is calculated to promote communal strife and might even lead to breaches of the public peace in some cases. It has accordingly been deemed necessary to make this formal announcement of the policy and intention of myself and my Government in regard to such propaganda and communal relations within the State generally.

As the beginning of my rule I announced to you, my people, that my religion is justice. That announcement has guided all my public acts and policies and I shall always adhere to it. I have not made, and will not permit, any discrimination against any class of my people on the grounds of religion. The humblest of my subjects has free and direct access to me and any grievances my people may have can be submitted by them personally to me. Subject to two fundamental conditions, viz.,

(1) that political activities are confined within the law of the land, and
(ii) that no outside intervention is sought in any shape or form

I have no desire whatever to suppress the legitimate repuests

and voice of my people whether expressed in writing or in speech. It is my inention to give effect to these views, but I am unable to do so, so long as communal tension exists, for fear of aggravating it. Consequently, the first essential is that the leaders of the various communities should take immediate action to put a stop to all political activities tending to prevent the re-establishment of friendly relations between them. As soon as it is reported to me that any community has faithfully responded to my desire, I shall be prepared to receive and consider most sympathetically any re-presentation that community may desire to submit to me.

Every person within the State is, and shall always be, free to practise his own religion, subject to the paramount necessity of maintaining public peace and public order. I particularly wish to refer in this connection to a malicious rumour now being spread that cow killing is shortly going to be permitted. This malicious rumour has no foundation whatever. And it has given me great pleasure to receive from Muslim subjects spontaneous condemnation of such an insinuation or any other insinuation likely to injure the religious susceptibilities of any other community. There is no question whatever of making any change in the matter.

In regard to recruitment for the State services prior consideration is and shall always be given to the public interest and the obligation of maintaining the efficiency of the administration at the highest possible level can never be overlooked. There is also no desire to follow a blind rule of percentages for the various communities irrespective of cansiderations of qualification and merit. Subject to these conditions the policy governing recruitment will be such that no class or community should gain undue predominance in any branch of the public service and that adequate representation is secured to duly qualified. Hereditary State Subjects from all classes and communities of my people. Instructions to this effect have been recently issued and I shall watch closely their practical execution by my officers.

I have dealt above in a brief manner with what I conceive to be points of major importance with regard to which some misunderstanding prevails in certain quarters. I trust such misunderstanding will be dispelled by this authoritative

enunciation of my beliefs and intentions with regard to these points. It is my aim to carry on the administration in consonance with these views in your best interests. Whenever I have found that any of you have been led into wrong action, I have always tried to make you see the error of your ways and to win you over to the right path by reasoning and conciliation. I am not a believer in false ideas of prestige, for I hold that just action is a sign of strength and not of weakness. But should, God forbid, all appeal to reason fail, I must discharge in effective manner the supreme responsibility which rests on me for the maintenance of law and order. I cannot allow my Government to be coerced by threat into unjust action and it is my duty to protect the law-abiding sections of my people from encroachments on their lawful rights. The immediate burden of maintaining law and order necessarily falls on the Magistracy and the Police whose duty it will be to see that the law is upheld at all costs, and where the law is defied, its authority will be restored. It is the duty of the Police to act impartially and with calm judgement in such emergencies and I wish to assure them that they will be supported by myself and my Government in the due discharge of their duty and will not be sacrificed to unjust clamour or intrigue.

In conclusion, I trust that the old policy of 'live and let live' which characterised your relations with each other in the past will be restored. It is easy to excite public feeling by misrepresentation, but it is difficult to restore harmony and friendship. Do not attribute false motives to those placed in authority over you or to one another. As regards people outside the State, whether Hindus of Mahomedans, I ask them not to interfere in any way in matters concerning my State and my people, as I do not interfere in matters concerning British India and British Indians. The whole basis of political action is impaired if one political unit interferes in the demostic concerns of another. I do not wish to claim immunity from legitimate criticism of the acts and policies of my Government, which, I have no hesitation in saying, have always been designed to promote the moral and material progress of my people. It is my duty and my one aim in life to maintain the progressive character of my administration. But this end is defeated by unjustifiable outside intervention which has, within the last few

weeks, done nothing but immense harm to the true interests of you all. I pray to God that you will receive the light of truth and wisdom and that you will live peacefully and happily with one another as before.

"Sd. HARI SINGH, G.C.I.E.,
K.C.V.O., A.D.C.,
Maharaja of Jammu and Kashmir.

50. Report of the Kashmir Constitutional Reform conference, 1932.

The most important issues which the Conference has examined are as follows :

(a) Is it desirable that there should be a Legislative Assembly?
(b) If so,

i. What should be the functions of such an Assembly,
ii. what should be the franchise basis, and
iii. how should the Assembly be composed.

As regards the first of these questions, it will be seen from the proceedings that there has been some difference ofop inion. In regard to the functions of the proposed Assembly something closely approaching unanimity has been achieved. So far as the other main issues are concerned, there has been a very considerable divergence of views, especially with regard to the composition of the Assembly. This divergence is hardly surprising, considering the conflicting interests which different members have represented. There appeared unfortunately to be no hope whatsoever of attaining any sembalance of a unanimous finding on these points, and it was therefore agreed that there was no prospect of submitting a joint report. The Chairman accordingly forwards his own recommendations, referring, as may be necessary, to the

opinions put forward on behalf of various interests : the proceedings recorded will show that the recommendations made, follow in general the joint views expressed, where there has been a consensus of opinion : where opinions have differed endeavours have been to bear in mind the legitimate interests of all communities concerned.

The full purport of the draft recommendations has been read out in Urdu at a meeting held on the 7th of April so as to provide an opportunity for the suggestion of modifications or amendments; any such suggestion received has been given due attention, and each member has been informed by letter of the final recommendations which are being made in regard to the composition of the Assembly after further consideration of the views put forward.

ESTABLISHMENT OF A LEGISLATIVE ASSEMBLY

Certain members have, it will be seen from the proceedings, expressed considerable misgivings as to the wisdom of such an innovation at the present time, in view of the disturbed conditions which have unhappily been prevailing.

The general feeling is, however, in favour of such an experiment being tried.

It appears highly desirable that the subjects of the State should be given a voice in the administration and in view of the announcement already made by His Highness in this behalf there would seem to be no room for doubt as to the action which should be taken in this respect.

It is recommended that a Legislative Assembly should be established as soon as may be practicable.

POWERS AND FUNCTIONS OF THE ASSEMBLY

The proceedings will show that a virtually unanimous opinion has been expressed at the Conference in favour of the functions of the Assembly being defined as follows :

LEGISLATION

Subject to the final assent of His Highness the Maharaja Bahadur the Assembly should have power to make laws.

GOVERNMENT BILLS.

All Government bills except such bills, if any, as relate exclusively the reserved subjects (namely (1) the person or privileges of His Highness or members of the Ruling Family, (2) foreign relations, (3) the discipline and control of the State Forces) should be referred to the Assembly and should not become law until ratified thereby provided that:

(a) His Highness should in case of emergency retain full power to make and promulgate ordinances for the good government of the State and any such ordinances should be operative for a period of six months unless repealed by His Highness at an earlier date.
(b) His Highness should, where he considers it necessary in the interests of good government, have power to certify any bill which the Assembly may decline to pass.

PRIVATE BILLS

The introduction of any private bill should be allowed and the bill, if passed, should, subject to His Highness' final assent, become law provided that:

(a) no such bill shall relate to reserved subjects as already defined;
(b) unless the previous approval of His Highness' Government has been obtained, no bill shall involve the imposition of new taxation or the enhancement or reduetion of axisfing taxation;
(c) no bill shall affect the religious rites, usages, ens downments or personal law of any community other than to which the proposer belongs; a bill affecting the usages etc. of that community only which the proposer represents may be introduced if not less than two thirds of the elected members of their community are in favour thereof, and if the previous permission of His Highness for the introduction of such a bill has been obtained;

(d) no bill shall involve the imposition of disabilities on any class or community as such;
(e) no bill shall affect the rights specifically granted to to Jagirdars, Pattadars, etc. in their Sanads or Pattas;
(f) unless the previous sanction of His Highness' Government has been obtained no bill shall be introdnced which it is intended to apply to any Illaqa or Jagir to which the State laws are not ordinarily applicable.

His Highness shall have the power of referring back any bill to the Assembly for further consideration or amendment.

The above proposals, representing, as already remarked, the practically unanimous opinion of the Conference, are recommended for adoption.

Various other suggestions have been put forward; it has been suggested for instance that no bill should be introduced (a) which affects the privileges of Rajputs as such or (b) which affects any class of non-state subjects residing in the Jammu and Kashmir State.

There does not appear to be any sufficiently strong reason for adopting these suggestions. In regard to the rights of non-State subjects for the purposes of the Assembly, opinion is expressed below.

QUESTIONS AND RESOLUTIONS

Questions and resolutions should be permitted without restriction provided that :

(1) they do not relate to reserved subjects as already defined;
(2) they do not affect the religious rites, usages, endowments or personnal law of any communitv other than that to which the member asking the question or moving the resolution belongs; such questions or resotutions may, however, be allowed with the special permission of the President of the Assembly, who should, where he considers it necessary, refer the matter for the orders of His Highness;
(3) they do not relate to the merits of cases under enquiry

by a court of law.

Supplementary questions should be allowed.

PERIOD OF NOTICE

In the case of questions, thirty days' notice should ordinarily be given, so as to afford due opportunity for the supply of the information required. The President should have the power to reduce this period where it may be necessary.

In the case of private bills, a similar period of thirty days' notice should be given, and the member wishing to introduce a bill should forward a copy thereof together with a statement of the objeets and reasons.

In regard to resolutions fifteen days, notice should be given.

In the case of any bills, resolutions of questions for which previous sanction is necessary, an additional period of fifteen days' notice over and above the minimum period ordinarily prescribed should be required.

BUDGET

The President should appoint certain days prior to the announcement of the State financial year (at present the first of Katik or mid-October) for the discussion of the State Budget In the Assembly.

A week before the first date so appointed, a copy of the budget and a brief explanatory statement thereof in Urdu should be forwarded to each member of the Assembly. Members should on the dates appointed be given full opportunity to ask questions and make suggestions relating to any part of the budget with the exception of reserved subjects.

No kind of new taxation should be imposed without reference to the Assembly; the grant of monopolies etc. which amount in themselves to the imposition of new taxation should be treated in the same manner.

FREEDOM OF SPEECH IN THE ASSEMBLY.

Speeches delivered in the Assembly should be privileged and should not be actionable. It should be the function of the President to intervene in the case of exceptionable remarks.

In regard to the above points, namely questions and resolutions, period of notice, budget procedure and freedom of speech, the proposals recorded above represent the general consenus of opinion expressed at the Conference, and their adoption is recommended accordingly.

STANDING COMMITTEE.

It has been suggested that simultaneously with the creation of the Assembly, a non-official Standing Committee should be appointed and that the policy of Government in regard to finance, public health, etc. should be explained to the members of such Committee and their opinions on these point should be ascertained.

This is a development which might well take place after a suitable period has elapsed. It appears advisable, however, that it should be deferred untill the Assembly has actually been created and some experience of its working has been gained.

FRANCHISE.

It is generally agreed that the number of voters on the electoral roll should amount approximately to ten per cent of the total population, a ratio which has frequently been adopted as the working rule in British India. In order to achieve this object the appointment of a Franchise Committee or some organization corresponding thereto will be necessary. Information is unfortunately lacking as to the number of people likely to be entitled to vote if different kinds of qualifications are

adopted; the proposals put forward are therefore merely tentative and suggested as a temporary expedient.

As a working basis for the time being, various qualifications have been suggested. It will be observed from the proceedings that opinions have differed to a marked extent in this respect. For instance, the views given in respect to land revenue qualifications have varied between Rs. 10 payment and Rs. 50 payment per annum; in respect to immoveable property between Rs. 500 and Rs 2000 in value, and in regard to educational qualifications between Middle pass and Graduate standard.

It is recommended that in the four following cases, the standards now prescribed for the right of voting at Municipal elections may be adopted as franchise qualifications in regard to the Assembly:

1. Payment of land revenue not less than Rs. 20 per annum.
2. Possession of immoveable property not less than Rs. 1000 in value.
3. Membership of a learned profession, such as the Medical or Legal profeesion, etc.
4. The receipt of a Government pension of not less than Rs. 25 per month.

In addition to the above it is recommended that any of the following additional qualifications should also be regarded as sufficient:

1 Payment of Municipal taxes not less than Rs 20 per annum.
2. Title holders, Zalidars, Lumberdars and Safed-Poshes.
3. Jagirdars and Pattadars enjoying an assignment of not less than Rs 50 per annum.
4. Educational standard Matriculate or corresponding varnacular standard.

The qualifications suggested above would appear to be sufficient for the present. It does not appear advisable to provide for further qualifications in the way of annual income, payment of house-rent or payment of customs as there will be

difficulties in the way of satisfactorily verifying such qualifications.

The same qualifications for membership or the Assembly as those recommended for franchise might be adopted.

DISQUALIFICATIONS

It is recommended that the following should be regarded as disqualified for purpose of franchise:

1. Females.
2. Persons below the age of 21.
3. Person certified as insane.
4. Undischarged bankrupts or insolvents.
5. Persons convicted by a criminal court of an offence punishāble with imprisonment for a term exceeding six punishable with imprisonment for a term exceeding six months, provided that if a period of five years has clapsed, since the termination of the sentence, the disqualification shall cease to operate.
6. Persons who are at the time of the election uuder orders by a competent court to provide security for good behaviour.
7. Persons, other than State-Subjects, who have not been domiciled in the State for a consecutive period of five years immediately preceding the time of the election.

With regard to the latter disqualification, it has been represented on the one hand that only State subjects as now defined should have the right to vote and that on the other hand that one year's residence in the State should be sufficient ot qualify for franchise and that the present definition of "State subject" should be discarded all purposes. It is not within the scope of the Conference to consider the appropriateness of the existing definition of "State subject" for general purposes. As regards qualification for the franchise, however, though there is every reason for upholding the prior claims to State subjects in general, the present definition appears to be unduly rigid; domicile in the state for a thousand years cannot according to the definition qualify a man to become a hereditary State subject. It would seem both unfair and

inexpedient to deny the right of franchise to a man who has so far identified himself with local interests as to make his domicile in the State over a consecutive period of five years. As one member of the Conference has aptly expressed it, man can beget sons, he cannot beget his ancestors.

Some Members have given their opinions in favour of an experiment in the direction of female suffrage. But the general consensus of opinion is against this departure. In view of the backward condition of female education it appears adviseable to defer for the present any proposal of this nature.

In regard to disqualifications for elected membership of the Assembly, it is recommended that the same standards as those proposed above in the case of franchise should be adopted with the following additions or modifications :

1. Persons below the age of 25 (instead of 21 as in the case of franchise).
2. Persons not on the electoral roll.
3. Persons unable to read, write and understand the court language, namely Urdu.
4. Persons actually in the service of Government.
5. Dismissed Government servants, provided that the disqualification in this respect may be removed by the specific orders of Government.
6. Persons, other than first class State subjects as now defined who have not been domiciled in the State for a consecutive period of fifteen years, immediately preceding the time of the election.

In the case of this letter disqualification, the remarks already made in connection with the question of State subjects should suffice.

It will be observed from the proceedings that there has been a fair approach to unanimity in regard to the question of disqualifiations.

COMPOSITION OF THE ASSEMBLY

Elected Members.

In the absence of detailed information in regard to the number of persons likely to be qualified to vote on the basis

suggested above, a rough guide can be afforded by the population statistics as recorded in the Census which has recently taken place. Once again it may be pointed out that the proposals put forward are only tentative and may be found to require considerable modification when statistics have been collected showing the approximate voting strength of various classes and communities.

The total population of the State is recorded as roughly 36-1/2 lakhs. Excluding the Poonch and Chenani Jagirs and certain distinct Frontier Illaqas such of as Hunza and Nagar, which are in certain respects withdrawn from the scope of the ordinary State machinery, the population comes to approximately 32 lakhs. If Ladakh and Gilgit proper are also excluding there would be a further reduction of about 2-1/4 lakhs. The general feeling of the Conference is that Ladakh and Gilgit proper should not be excluded for the purposes of the Assembly. It is true that these tracts are comparatively backward, also that they are cut off at certain times of the year; they from, however, an integral part of the State for ordinary purposes and except in the winter months communications are open.

It is clearly undesirable that the Assembly should be composed of so large a number of members as to become unwieldy. A working basis in regard to the number of elected members would seem to be provided by the allotment of one such member to every lakh of the population. On this basis there would be 32 elected members in all.

JOINT OR SEPARATE ELECTORATES

One important question that arises is whether electrorates should be separate or joint. It will be observed that there has been a general consensus of opinion at the conference in favour of separate electorates. Some members have pointed out that, although the establishment of separate electorates has some times been regarded as responsible for increasing communal tension in British India, the acute communal feeling which unhappily prevails in the State at the present time can certainly not be ascribed to this cause; it has been maintained that in the case of the Srinagar Municipality the introduction of joint electorates has enhanced the feeling of antagonism

and distrust between the different communities. It would appear that in the existing state of tension, the institution of joint electorates must be regarded as a dangerous experiment. It is obviously adviseable at the present time to avoid as far as possible all superfluous elements of danger. Separate electorates are accordingly recommended,

There has been a consensus of opinion on the point that there should be no plural voting. The place at which a voter should record his vote should depend upon the locality in which he normally resides at the time of the election.

In regard to the allocaion of elected seats in the Assembly among the various communities widely different views have been put forward. It has been claimed on the one hand that at least 25 seats out of 32 should be allotted to Muslims, who number 75 per cent. Out of the populatoin of the part of the State with which it is proposed that the Assembly should be concerned. On the other hand it has been represented that there should be two elected Hindu members to every one Muslim. And special claims have been but forward on behalf of the particular classes or communities, such as Sikhs and Rajputs and also on behalf of the depressed classes.

The two main communties are Muslims and Hindus. The population of these two communities stated in round numbers is as follows for the various portions of the State which it is proposed to take into consideration:

JAMMU PROVINCE

	Muslims	Hindus
Jammu Wazarat excluding Jammu City.	1,37,000	1,93,000
Jammu City.	12.000	24,000
Kathua Wazarat.	40,000	1,21,000
Reasi Wazarat.	1,55,000	79,000
Udhampur Wazarat.	1.17,000	1,56,000
Mirpur Wazarat.	2,78,000	57,000
Total for Jammu Province	7,39,000	6,30,000

KASHMIR PROVINCE

Southern Kashmir excluding Srinagar City.	5,75,000	20,000
Srinagar City.	1,39,000	34,000
Northern Kashmir.	5,43,000	11,000
Muzaffarabad.	2,22,000	4,000
Total for Kashmir Province.	14,79,000	69,000

FRONTIER

Ladakh.	1,53,000	300
Gilgit proper.	31,000	1,000
Total Frontier.	1,84,000	1,300
Grand Total.	24,02,000	7,00,300

Buddhists who are almost entirely confined to the frontier districts of Ladakh amount to 39,000. Sikhs whose numbers are more or less equally divided between the provinces of Jammu and Kashmir, also come to 39,000.

If population is strictly followed, Muslims, whose ratio works out at 75 per cent, should get 24 out of 32 elected seats and Hindus, who come to 22 per cent should be given 7, Budhists and Sikhs would hardly qualify for one seat between them.

The principle of "weightage" has, however, to be taken into account in order to safeguard the interests of minor communities. This principle has been fully recognised in British India. In the United Provinces for instance Muslims, whose number only a little more than 14 per cent of the population, have been given not less than 29 per cent of elected seats in the Legislative Council. In Bombay non-Muslims, whose numbers amount to nearly 79 per cent of the population, have been reduced in the matter of elected seats to a

bare majority. Responsible Mohammadan opinion has been expressed in favour of the principle of "weightage" being applied to the State Assembly provided that Muslims are allowed to retain an actual majority in the matter of elected seats.

A fair solution would appear to be provided by allowing to Hindus sufficient "weightage" to bring their number of elected seats in the Assembly upto 33-1/3 per cent Muslims would in this case be awarded a fraction over 60 per cent while Sikhs and Buddhists would each be given just over 3 per cent.

It has been claimed that not less than 4 seats should be allowed to Sikhs, or, failing that, two, one for Jammu and one for Kashmir. It is true that, as has already been remarked, the Sikh population is scattered over the two Provinces. It is also true that the behaviour of the Sikhs has been exemplary during the recent disturbances and that they are fully deserving of consideration, but, as far as the State is concerned, they are relatively a very small community and it is difficult to allot them more than one elected seat without unduly affecting the interests of others. It is suggested that their aspirations might be met by the practice of including among the nominated members one Sikh member coming from that province to which the elected Sikh member does not belong. This should be sufficient to provide for the reasonable requirements of the community as the Sikh representative at the Conference has explained, the Sikhs are not striving for power in the State, they only desire that their voice should be heard. The only other alternative that seems possible is to increase by one the total number of elected members, this would of course disturb the general ratio.

In the case of the Buddhists one elected seat should suffice. As mentioned above, the Buddhist communty is practically confined to one portion of the State and it is doubtful what their actual voting strength will prove to be.

Some difficulty is to found in deciding how effect is to be given to the "weightage" proposed for Hindus. It is true that the great bulk of the Hindu population belongs to the Jammu Province, but there are obvious objections in the way of allotting them a larger number of seats in that Province, than can

be given to Muslims, who even in Jammu are more numerous than Hindus. The most satisfactory solution appears to lie in giving the "weightage" its main effect in the Kashmir Province; although the Hindus in Kashmir are relatively small in numbers, they are a highly advanced community and it is to be expected that their population would suggest.

It is not proposed that any elected seats should be reserved for the depressed classes. In the census the depressed classes are recorded as Hindus, and there appears to be no sufficient reason for according them different treatment from that received by them in the Punjab, where no special reservation obtains.

It is recommended that the total number of elected seats should be 33 and that they should be distributed as follows:

	Muslims	Hindus	Buddhists	Sikhs
A. JAMMU PROVINCE				
Jammu City ...	1	1	...	...
Jammu Wazarat ...	1	2	...	...
Kathua Wazarat ...	1	1	...	...
Udhampur Wazarat ...	1	1	...	1
Reasi Wazarat ...	1	1	...	...
Mirpur Wazarat ...	2	1	...	...
Total Jammu Province	7	7	...	1
B. KASHMIR PROVINCE				
Srinagar City ...	3	2	...	...
Southern Wazarat ...	3	1	...	...
Northern Wazarat ...	3	1	...	...
Muzaffarabad ...	2	Nil	...	...
Total Kashmir Province.	11	4	...	...
C. FRONTIER				
Gilgit proper ...	1	...	...	...
Ladakh ...	1	...	1	...
Total State : ...	20	11	1	1

Here again there has been a great difference of opinion, the proposals put forward by various members for the proportion of nominated to elected seats vary between 25 per cent and 150 per cent.

It would seem a fair solution that the total number of nominated members should be equal to two thirds of the number of elected members, namely 22, and that in addition to these His Highness the Maharaja Bahadur should, if he sees fit to do so, appoint his ministers, not exceeding 5 in number, as ex-officio members. The total membership of the Assembly would thus be limited to 60 (33+22+5). In regard to the nominated members, not less than one third should be non-officials; apart from His Highness should have entire discretion in their matter of nomination. There has been a general consensus of opinion, however, expressed at the Conference that nomination should be so regulated as to provide as far as possible for the representation of interests which are not specially catered for in the elected membership, such for instance as Jagirdars and commercial interests.

If the above recommendations are adopted, there would be a clear elected majority and there would be a proportion of not less than two non-official members to the one official member.

PRESIDENT OF THE ASSEMBLY

It is recommended that the Assembly should be presided over by the Prime Ministers or such other Ministers as His Highness may be pleased to appoint for the purpose.

NUMBER AND PLACE OF MEETINGS

A part from any special meetings which it may be found necessary to call, it is recommended that there should be two regular meeting of the Assembly a year, one at Srinagar in the month of Assuj (September-October) when the budget proposals amongst other matters can be discussed, and one at Jammu in the month of Phagan (February-March) or such other time as may be convenient.

LIFE OF THE ASSEMBLY

The life of the Assembly should, it is recommended be fixed at three years in the first instance.

Rules relating to the number necessary to form a quorum and other matters of comparatively minor importance can be provided for suitable in the bye-laws.

It is recommended that the Assembly should have no power to propose an alteration in the enactment creating the Aesembly unless the previous approval of His Highness is obtained through the President.

DISTRICT BOARD

Apart from the question in creating a Legislative Assembly the subject of District Boards and Municipalities has also been raised at the Constitutional Conference.

At present there are no District Boards in the State. There has been a general consensus of opinion expressed at the Conference in favour of a beginning being made in this matter in the following way.

Wazirs or District Officers should once every year call a meeting of all the Zaildars in their District. The Tehsildars and the Road Cess Overseer should also be present. The Wazir should make known the amount of funds available from the Road Cess Fund for expenditure in the Wazarat, he should ascertain from those present the requirements of the various Zilas and he should then proceed to make allotments after taking into consideration the views expressed. Zaildars should at the same time be given an opportunity to put forward their views in regard to other matters such as Schools, Medical Relief, Sanitation, etc.

In the case of districts in which distances are great and communications indifferent, such as for instance the Udhampur Wazarat which includes Kishtwar, Bhaderwah and Ramban, it may be difficult to summon Zaildars to District headquarters without causing them undue inconvenience; in such cases the Wazir should make a point of consulting Zaildars at convenient places when he proceeds on tour.

It has been agreed at the Conference that it is inadvisable

to hold more than one such meeting a year at the headquarters of a Wazarat, as it is believed that, if the number of such meetings is multiplied, many Zaildars will be unwilling to attend. It has been pointed out that under present conditions Zaildars are put to much inconvenience in visiting District headquarters because there is no suitable building in which they can be accommodated; this is a matter which should receive the attention of the State authorities.

MUNICIPALITIES

The following views in regard to Municipalities have been expressed and deserve consideration.

ELECTORAL ROLL

It is considered that the electoral rolls should be revised in such a way as to make the numbers recorded thereon equivalent to about ten per cent of the total population of each Municipality. At present the number of voters appears to be considerablv less than this in the case of Srinagar city.

SEPARATE ELECTORATES

In view of the opinions expressed in regard to the undesirable effects of joint electorates in the matter of communal tension it is suggested that the question of substituting separate electorates should receive attention.

NUMBER OF ELECTED MEMBERS

It is recommended that the proportion of elected members who now form 50 per cent of the total, should be slightly increased so as to provide for an elected majority. An increase in the total number of Municipal members does not appear to be desirable in the interests of efficiency.

EXTENSION OF POWERS

It is understood that the Municipal Committee of Srinagar

has already put forward proposals to the Minister-in-Charge for an increase of powers, and that the matter is under the consideration of His Highness' Government; and early decision appears to be desirable.

NON-OFFICIAL PRESIDENT

The proposal that Municipalities should be presided over by a non-official is far from meetting with universal approval. No recommendation in this direction appears at present to be justified.

DELAY IN AWARDING COMPENSATION

It is represented that Municipal Committees at present allow great delay to occur in paying compensation for property acquired etc. Endeavours should be made to expedite the disposal of such cases.

(Sd) B.J. Glancy
P r e s i d e n t
Constitutional Reforms conference

REPORT OF THE FRANCHISE COMMITTEE, 1933

In the order dated 31st May 1932, His Highness the Maharaja Bahadur in Council accepted the recommendation of the President of the Kashmir Constitutional Reforms Committee, Mr. Glancy, and appointed a Franchise Committee. Observing from Mr. Glancy's Report that the Reforms Conference had only been able to put forward tentative suggestions regarding the important question of the franchise and of the composition of the Assembly, His Highness in Council instructed the Franchise Committee to examine the different kinds of qualifications and disqualifications for the franchise and for elected membership of the Assembly and to submit recommendations on matters referred to in that Report and on—any other matters which as a result of the Committee's enquiries appeared to be germane to the subject. The Committee was

authorised to collect statistics, to receive representations and to examine witnesses.

2. The Committee was composed of the following Members:

1. Sir Barjor Dalal, Kt., I.C.S. (Retd.).....President
2. Mr. L.W. Jardine, I.C.S.....Vice President
3. R.B. Sardar Thakur Kartar Singh Ji,.....Member
4. K.B. Sheikh Abdul Qayum.....Member

With Mr. Ram Nath Sharma, Registrar High Court, as Secretary.

On the 24th March 1933, Sir Ivo Elliott, I.C.S. (Retd.) was appointed Franchise Officer and replaced Mr. Jardine as Member of the Committee.

Owing to the pressure of his ordinary work Mr. Ram Nath Sharma left the Secretaryship and Mr. Hira Nand Raina was appointed Secretary to the Committee. To both these gentlemen the Members of the Committee desire to express their thanks, and especially for their arrangements in the examination of witnesses.

3. The Committee first met on the 8th of June 1932, to discuss procedure. We paid special attention to the need for securing the widest possible attention of the public to the points which we had been instructed to examine. A proceedings of the Committee were published in the Gazettee and in October 1932, the Committee issued a Questionnaire as a further help to witnesses in covering the whole ground of enquiry. The 3rd October 1932 was the earliest date by which we could expect witnesses to prepare written statements and to give oral evidence, and we hoped to hear the Srinagar witnesses in this month. Very few of them, however, were able to attend at the date fixed and the hearing of evidence in Kashmir had to be postponed to the 1933 season, though the Committee took the opportunity of examining some witnesses at Muzaffarabad and Baramulla. The Committee heard evidence in Jammu in April 1933 and in Srinagar in May 1933.

Full publicity was given to the proceedings; the written statements of witnesses were read in open Committee and the witnesses were then orally examined. The Committee also

permitted any persons present at the meeting to ask questions from the witnesses on the points on which they had given their evidence.

4. The list of the witnesses examined and of some individuals who were only to submit written statements is given in Appendix 1. The list comprises representatives of every community in Jammu and Kasmir and we are satisfied that we have been made acquainted with the opinions of most parties and classes in the State. We should have welcomed some further assistance at Srinagar from the "Jammu and Kashmir Muslim Conference." We were informed by the President of the Conference on 16th May 1933 that in fact the Conference did not propose to add anything to the statements made in the Memorial of 19th October 1931. That Memorial was earlier in date than the proceedings of the Constitutional Reforms Conference, which it was our special duty to snpplement by more detailed enquiries, and as the particular statements in it were no more than two very short paragraphs expressed in the most general terms, the President in his letter of the 17th May 1933 invited the Conference to submit evidence on the points of detail in the manner which had been indicated by our Questionnaire and which had been followed by our other witnesses whether speaking in a personal or representative capacity. We were promised that a member of the working committee of the Conference would send in a written statement and give evidence, but this was not done.

5. Our Questionnaire, which in its arrangement closely followed the points in Mr. Glancy's Report on the Constitutional Reforms Conference, has probably been more helpful to our witnesses than it has been to us. It enabled them or the associations which they represented to say yes or no to a numher of isolated propositions. But we have been disappointed at the failure in too many cases to give reason for the answer or even to ensure that the answer to one question was consistent with the answer to another. This failure was due in part no doubt to the divergent nature of thc questions which we had asked in our Questionnaire and in particular the function of constituencies; but we must regret that so few witness saw the need for basing their answers on some general and consistent scheme which would embrace all interests. It was not enough at this

stage to put forward the maximum claims of a community, to express ignorance of or indifference to the claims of any other community and to make no attempt to reconcile these different claims in one coherent scheme. Yet this has been a general feature of the evidence.

It is a matter of interest that on only one of the main points which we had to examine were our witnesses absolutely unanimous; all agreed in preferring direct election to any form of indirect election. Only one witness advocated manhood suffrage. For the rest there was an extreme divergence of opinion and this divergence has been mainly on a communal basis.

We have therefore been faced with the same exaggeration of communal claims and fears which made the Constitutional Reforms Conference abortive and prevented any of its Members from putting their signatures to Mr. Glancy's Report. We think then that it would be helpful if we begin by exami ning what appears to us to be the chief cause of this exaggeration, namely the excessive attention which has been given to the idea. We certainly cannot call it the principle—of enfranchising 10 per cent of the total population. This idea rests on mis-apprehension and indeed on mis-statement.

6. Mr. Glancy began that part of his report with which we are chiefly concerned by saying; "it is generally agreed that the number of voters on the electoral roll should amount approximately to ten per cent of the total population a ratio which has frequently been adopted as the working rule in British India." This is not correct; it is not a working rule. The reports of the Statutory Commission and of the Indian Franchise Committee show that the existing system in British India has enfranchised a per centage which varies from 1.1 in Bihar to 3.9 in Bombay. The British Indian Provinces have been accustomed for many years to election either for the local self-governing bodies or for the Councils, and it is because there has been this experience with the smaller experience, an advance towards adult franchise. It was for conditions which were still in the future that the Statutory Commission suggested 10 percent as a possible figure which would educate a wider electorate, that the Provincial Governments with some hesitation prepared to arrange for number of electors, and that the Indian Franchise Committe developed

their further proposals.

There is no virtue whatever in the ratio of 10 per cent it is an arbitrary figure which has been suggested as a rough measure of the advance which can be made practically towards adult suffrage in a country where years of experience of a restricted franchise have made some advance possible. It would be entirely against constitutional history to lay so much stress on the total numbers of men, women and children, or in other words to think in terms of adult suffrage, in a country which has never yet had any wide-spread electoral system. In the first stages of constitutional progress the chief element is not the individual men, it is the constituency. When the Ruler has desired to associate his Government, he has had two ways of securing a competent and representative body of advisers. A part from his own officials there are prominent and capable men whose advice he would obviously require for legislation, and whom he can summon by name to his Council, and these have often been the nucleus of a second Chamber. But as the Kingdom advances there is more need for the specific representation of local interests, and more important men of local areas are required to elect their members to supplement the nominees. What these local are as should be, has never been determined by some exact measurement of men and women through a census of even by the allotment of an exact number of enfranchised voters to each seat; the local areas have determined themselves by their history and form of administration. Historically it has been the towns which usually have been the first to secure elected representation, as the concentration of trade in them has given them importance and they have had some special administration which has made it less reasonable that there interests should be represented only by the big land holders who have been called by the Ruler to his Council. Elected representation of the country apart from the town, belongs to a later stage, and when it has been granted, the territorial units have differed very largly in size in every country where representative Govt. has been established, and these differences still continue. It is only at a very advance stage of progress, namely when adult suffrage is becoming possible, that there has come the idea of making the constitenucies

more equal in size or number of the total population, and even now as the example of many democratic countries shows, equality cannot be reached, and the constituency remains more important than the census.

7. It is from these considerations of normal constitutional growth that we hold that it has been a misapprehension to lay so such stress on the idea of enfranchising 10 per cent of the total population, apart from the actual misstatement of describing this ratio as a working rule. We propose to base our recommendations on the constituencies; and for this reason we deal first with the composition of the Assembly before we proceed to discuss the franchise; but our scheme will show that we have also given appropriate weight to the numerical facts, though we have been careful not to exaggerate their importance.

The facts about the constituencies can be stated very shortly. There are the two cities. Jammu and Srinagar, which have special importance as in them are concentrated wealth, trade, education and the learned professions. There are ten Wazarats, Jammu, Udhampur, Reasi, Kathua, Mirpur, Kashmir North, Kashmir South, Muzafferabad, Ladakh and Gilgit. We have been informed in the Prime Minister's letter that the Jagirs should be included in the constitutional scheme. Chenani is small but has entirely separate interests which must be represented. This Jagir and Poonch bring the number of rural constituencies to twelve. There can be no question of including the Frontier Ilaqas outside Ladakh and Gilgit.

On these facts, and with historical reasoning behind us, we might with advantage consider a first hypothesis of what would be a justifiable constitution. It would be possible to recommend that His Highness the Maharaja Bahadur's first Legislative Assembly, for the exercise of powers such as Mr. Glancy has foreshadowed, might well consist of thirty two members. Sixteen of these would be summoned by name by His Highness from those of his subjects who were most eminently fitted to be State Councillors; sixteen would be elected representatives, one from each of the rural constituencies, and two from each the cities; in this point we should be giving 'weightage, to the interests of the cities, but weightage to the factors of wealth and learning has always preceded weightage for mere numbers in

the stages before it becomes possible to be constituted to form a Sound nucleus for further development, when the political progress of the State made it possible to give greater responsibilities to the Legislature; the elected representation of the cities and districts could be increased so as to form a large Assembly; and the State Councillors would from the nucleus of a second Chamber or Council such as we consider might be required in the interest of the State as a whole in a more advanced type of constitution.

Such an Assembly would also have the merit of being comparable to that which has been established in the State of Bhopal, a State which resembles this State in certain essential factors. Bhopal has an Assembly of 24 members, only eight of whom are elected, and of these two members represent the city and two represent trade. Our Assembly of 39 members, 16 of whom would be elected, would be in advance of the Bhopal constitution and while giving weightage, as in Bhopal, to the urban interests, would give far greater representation to the agricultural population.

8. We are faced, however, by other local facts in Jammu and Kashmir, in particular the great diversity of the population, which compel us to go beyond our first hypothesis, though we retain its general principle. To meet these facts we must propose a greater number of representative members. In thus enlarging the Assembly on the lines which we state below, we are aware that we are recommending a greater advance over constitutions such as that of Bhopal, but we do not think that this will be unwise.

The diversity of the population can best be stated in the following table which shows to the nearest thousand of the adult males over 20 years of age in each of our proposed constituencies and in each of the principal communities. There is such general agreement that women cannot be enfranchised to any large extent that we require only the figures adult males. The figures for districts are exclusive of the

cities:

Constituency RURAL	*Muslims*	*Hindus*	*Sikhs*	*Buddhists*
Jammu	37	56	2	—
Udhampur	31	46	—	—
Chenani	1	3	—	—
Reasi	39	24	—	—
Kathua	11	35	—	—
Mirpur	71	15	2	—
Kashmir North	135	4	—	—
Kashmir South	156	7	1	—
Muzaffarabad	56	1	3	—
Poonch	82	6	3	—
Ladakh	41	—	—	12
Gilgit	8	1	—	—
Jammu City	5	9	—	—
Srinagar City	39	10	—	—

9. In the rural districts the results of an election on any conceivable system of franchise, if only one member was to be elected, would be the election of a Muslim member in five Wazarats and in Poonch, and of a Hindu in Kathua and Chenani. In Jammu, Udhampur and Reasi the result would be uncertain and this uncertainty could not fail to be reflected in communal competition which would be dangerous to the peace. We, therefore, recommend that each of these three constituencies should have two elected members, one for the Muslim electorate and one for the Hindu.

But if Jammu, Udhampur and Reasi return two members each, it would be to great an anomaly to leave Mirpur, Northern and Southern Kashmir and Poonch each with only a single member, and although we do not attach the first importance to this factor of population, it would be an almost equally great anomaly if in these four districts the second member were to be elected by the minority communities which are negligible in numbers compared with the minorities in Jammu, Udhampur and Reasi. The second member in these

four districts must clearly be a Muslim.

10. If however the Assembly is to embrace all local interests we must provide for the representation of the smaller minorities also, if they are to be divided from the major community and formed into separate electorates, as Mr. Glancy and the great majority of our witness, Muslim, Hindu and Sikh, have recommended. The 15,000 Hindus of Mirpur and the 11,000 Muslims of Kathua might each elect a member without straining over much the idea of weightage. The groups of Hindus in the three Kashmir districts are very much smaller, but they are to a very large extent homogeneous, and they have a high degree of literacy. For the small minority in Poonch the best course will be for the Ilaqadar to nominate a representative of the Hindus. In Chenani the numbers are so small that although there must be special representation, a system of election is not really justified, still less a system of separate electorates, and we feel that in this case also it will be wiser to ask the Ilaqadar to nominate his representative. But while we thus provide for the minorities by election or nomination according to their size, we must also in fairness to the majority community, be mindful of our principle of giving some weight, though in a less degree to the numbers of adult male population. We follow the same course of giving an extra elected member for a large group and an extra nominated member for a smaller group and we propose that where any community has more than 40,000 adult men to each elected member, there should be an additional elected member for each 40,000 and an additional nominated member for part of 40,000 greater than 5000. This scale would give a third elected member both to Kashmir North and Kashmir South, both from Muslim electorate and extra Muslim nominated member to each of the three Kashmir Districts, and an extra Hindu nominated member to Jammu and Udampur. Where a Wazarat or Ilaqa is altotted two or more members under this scheme, and the population is practically homogeneous, we think that the representation would be more effective if it were divided by Tehsils, roughly in accordance with the population figures, into single member constituencies. This would also make the conduct of the election much easier by decreasing the number of candidates for any one constituency. We

recommend that these constituencies should be as follows:

	Constituency	*Adult Muslims*
Mirpur	Bhimbar	25
Poonch	Mirpur Kotli	46
	Haveli-Mendhar	42
	Bagh-Sudhnuti	39
	Handwara (Uttarma-chipura)	62
Kashmir North	Baramulla	34
	Badgam (Sri Partap Singhpura)	49
	Tehsil Khas Pulwama	69
	Anantnag	33
Kashmir South	Kulgam	54

Although there is inevitably some inequality in the population of the different units we believe that this scheme would give excellent representation to local interests, and we are opposed to any readjustment of boundaries in order to equalize population, as the limit of the Tehsils are well known to everyone. The provision of three extra Muslim seats for the three districts of Kashmir Province will enable His Highness to nominate representatives of any Muslim elements for which the electoral system does not provide.

11. In the evidence given to us at Jammu we have heared with great interest and sympathy the claims of the Megh Community, and our conclusion is that the Meghs have real grounds for being specially considered, without however, being in any way separated from the mass of the Hindus. A comparison of the figures in the last two census shows that there must in 1931 have been some concealment of membership of this caste and their real numbers; this is one of the most important caste groups in the State. We also observe that the great majority of the Meghs are localized in Jammu and Udhampur Wazarats.

We have recommended that each of these Wazarats should have an extra Hindu member nominated; Jammu has 16,000 and Udhampur 6,000 adult males in excess of 40,000 but

these communities would not come on to our scale for extra members, were it not for the approximately 9,000 Megh adults in Jammu and 7,000 in Udhampur and also members of other castes which are elsewhere called the depressed classes. It is, therefore, as a measure of obvious fairness that we suggest that in these two constituencies the extra Hindu members to be nominated should be chosen from the Megh community. We make no other recommendation for the representation of the depressed classes; such a step would not be suitable in this first stage of constitutional representation, and the case for making it is not strong if the action which we recommend on behalf of the Meghs is taken, as they are by far the most important of the communities of this type.

12. We have hitherto referred to representation of Ladakh and Gilgit in the same terms as in the case of the other districts, but we feel that it will be impossible to hold elections in these frontier districts until much greater experience of the conduct of elections has been acquired. Those of our witnesses who have stated that elections could be held now in Ladakh and Gilgit have clearly been speaking without any knowledge of the actual process of election and have made light of administrative difficulties which they have not attempted to examine. These difficulties will be considerable in other parts of the State, but in Ladakh and Gilgit the rigours of the climate, the immense area the wide dispersion of inhabited sites and the extreme difficulty of communications between them make it a present impossible for a limited and entirely inexperienced staff to conduct an election. We must, therefore, recommend that at least until experience of election has been gained the members for Ladakh and Gilgit should be nominated and not elected. Our scale would give one Muslim and one Buddhist member to Ladakh and one Muslim member to Gilgit; but in view of the scattered and divers population of Ladakh we recommend that two Muslim and two Buddhist members should be nominated for that Wazarat. One of the Muslim members should represent Skardu Tehsil and the other Kargil.

13. We have provided members by nomination for the Buddhist and, as part of the Hindu representation, for the Megh community. A community which requires special consideration

is that of the Sikhs, and we have given a careful hearing to the claims put forward in their behalf, claims which have some justification from the fact that the numbers of the Sikhs, 12,365 adult males, are certainly not commensurate with their wealth, activities and general place in the State. The Sikhs are far less localized than are either the Buddhists or the Meghs, and it is difficult to fit their groups into our scheme of constituencies; yet the Sikh witnesses have laid stress on the fact that the two members suggested by Mr. Glancy could not properly represent local groups which live in such diverse conditions, and this has led them to make extravagent claims which admittedly have ignored every other consideration except the communal. After examining this point of the local distribution of the Sikhs, we think that it would not be unfair to assign them to three groups: firstly those of Mirpur and Poonch (4,800 adult males) whose circumstances are very similar; secondly those of Muzaffarabad and of the Baramulla and Uttarmachipura Tehsil (3,800 adults); and thirdly the Sikhs of the rest of the State (3,700 adults) who no where from any large local group, but have some general importance in business and industry.

We cannot treat these three groups as one body for the purpose of electing a member, like the Kashmiri Hindus whose groups in the three districts are living in the same condition in far easier contact one with the other. Our general method of handling this question of the smaller minority groups would justify us in proposing that three members should be nominated to represent the Sikh groups, but in that case the Sikhs unlike the other communities, would have no elected member. This would on general grounds be an unsatisfactory conclusion, and specially so because the Sikhs have a high percentage of literacy; out of the 12,365 adult males 4,064 are literate. This factor entitles us to recommend that out of the three Sikh groups, two (1) Mirpur-Poonch and (2) West Kashmir should each elect one member. This third constituency of Eastern Kashmir and Jammu minus Mirpur will be too large a constituency in which to arrange an election so we recommend a nominated Sikh member for that constituency.

14. The steps which we have considered in the preces-

ding paragraphs have raised the proposed rural representation to 24 elected and 12 nominated members. In the hypothetical constitution which we first examined we had 12 rural to 4 urban members and the latter number also must now be raised, and for the same reasons. We propose, therefore, that there should be 10 urban elected members, 7 from Srinagar and 3 from Jammu, of whom the Muslim electorate should elect 1 member in Jammu and 5 in Srinagar and the Hindu electorate 2 in each city.

In order to simplify the process of election, Srinagar should be divided into single-member constituencies, the basis of the division being, according to our general principle, the existing municipal wards. For the Muslim seats wards Nos. 1 and 3 in the south can be combined as one constituency- No. 1 carrying a comparatively light population. Similarly the outlying wards in the north, Nos. 6 and 8 should provide one seat. The qualified voters in ward No. 2 will be so predominantly Hindu that for the Muslim electorate this ward can be combined with No. 4. The densly populated wards 5 and 7 should each return a Muslim member. Of the two Hindu members one should be elected by wards 1, 2 & 3, the other by the remaining five municipal wards.

We have heard much evidence on behalf of the domiciled Hindus of Srinagar, a community which is of real importance to the State, though its numbers are small and it has few members who are State-sujbects. It is obvious that these Hindus could not secure an elected seat, as they are eompletely outnumbered in the possible Hindu electorate, and they would not de qualified for inclusion in the State Councillors. We, therefore, propose that there should be one nominated seat in Srinagar for their representation.

15. Our full scheme would thus provide 34 elected and 13 nominated members to represent the cities and districts. To these we should add the 16 State Councillors, to whom we referred in para 7 and whose inclusion we regard as an essential element in the constitution. The local facts which have led us to raise the number of representative members from 16 to 47 do not apply to the nomination of the most eminent men in the State, and we retain the original number sixteen. It is not for us to restrict His Highness' freedom of choice in summoning

his Councillors by name, but we would respectfully urge, firstly that they should be chosen from those whose actual and historical position in the State is so eminent that they would naturally be members of a second Chamber, if such were constituted, secondly that they should not be officials, and thirdly that in order preserve the balance of the communities, no fewer than five should be Muslims. It would also be advatageous if one State Councillor were a Sikh who could help to harmonize the more purely local views of the representative Sikh members. Fourthly we recom- mend that in view of their historical position in the State, four of the State Councillors should be Rajputs and four should be Ilaqadars or Jagirdars.

We propose that the State Councillors should remain members for more than one term of the Assembly, and that a Councillor nominated to fill a vacany should hold his seat for the next half term. This would secure some continuity in the advice which the Assembly could tender. It has a parallel in the British Municipal system. As we recommend later a three years term for the Assembly the State Councillors should be appointed for a term of 4½ years.

16. We recommend that the Assembly should be completed by the addition of twelve official members of whom six would be Ministers holding their seats ex-officio. Their presence is unquestionably necessary in order to state to the Assembly the views of the government. It is similarly desirable to have in the Assembly Heads of Departments who have expert knowledge; the remaining six official seats would enable His Highness to make such nomination as might be required for presenting this expert official knowledge and we recommend that one of these six official seats should be for an official of Poonch, to be nominated by the Illaqadar with the approval of His Highness.

17. We can now convenientiy tabulate the proposed composition of the Assembly.

Constituencies.	Muslim		Hindu		Buddhist		Sikh	
	Elect-ed	Nomi-nated.	Elect:	Nomi:	Elect	Nomi:	Elect:	Nomi:
1	2	3	4	5	6	7	8	9
Jammu City	1	—	2	—	—	—	—	—
Jammu Wazarat	1	—	1	1	—	—	—	—
Udhampur	1	—	1	1	—	—	—	—
Chenani	—	—	—	1	—	—	—	—
Reasi	1	—	1	—	—	—	—	—
Kathua	1	—	1	—	—	—	—	—
Mirpur, Hindu	—	—	1	—	—	—	—	—
Mirpur-Kotli	1	—	—	—	—	—	—	—
Bhimbar	1	—	—	—	—	—	—	—
Poonch, Hindu	—	—	—	1	—	—	—	—
Haveli Mendhar	1	—	—	—	—	—	—	—
Bagh Sudhunti	1	—	—	—	—	—	—	—
Mirpur Poonch Sikh	—	—	—	—	—	—	1	—
Srinagar City	5	—	2	1	—	—	—	—
Tehsil Khas Pulwama	1	—	—	—	—	—	—	—
Anantang	1	—	—	—	—	—	—	—
Kulgam	1	—	—	—	—	—	—	—
Kashmir South Muslim	—	1	—	—	—	—	—	—
Handwara	1	—	—	—	—	—	—	—
Badgam	1	—	—	—	—	—	—	—
Baramulla	1	—	—	—	—	—	—	—
Kashmir North Muslim	—	1	—	—	—	—	—	—
Muzaffarabad	1	1	—	—	—	—	—	—
Kashmir Hindu	—	—	1	—	—	—	—	—
West Kashmir Sikh	—	—	—	—	—	—	1	—
Ladakh	—	2	—	—	2	—	—	—
Gilgit	—	1	—	—	—	—	—	—
Total...	21	6	10	5	2	2	2	—

Total members with 16 State Councillors and 12 officials...75
33 elected members (21 muslims, 10 Hindus, 2 Sikhs)
30 nominated members
Minimum number of Muslim members...32 Excluding the 12 officials.
Maximum number of Hindu members...25

18. We do not recommend that there should be special representation either of the Rajputs or of the land-holders or of traders or of the depressed classes or of labour. The first two groups would have their representatives among the State Councillors; so too might trade, and we have considered the trading interests when giving weightage to the cities; and we have already stated our views and made provision for the depressed classes. Neither these nor the labourers would normally be represented in the first stage of constitutional development. We have no evidence of any serious organization of labour as a separate class. We consider, however, that the provision of extra nominated seats in the Kashmir Muslim constituencies would give His Highness an opportunity of selecting one or two members who would be more directly interested in the welfare of the labouring classes, in the same way as the Jammu and Udhampur Hindu nominated seats can be used for the representation of the lower orders of the Hindus.

We may and add here a recommendation that in no case should a candidate who has been defeated in an election be nominated to a seat in the same term of the Assembly. This is a convention in the practice of British India, for obvious reasons.

19. We conclude this portion of the Report with certain recommendations about the assembly, though we do not consider it to be our province to discuss its powers; we have made our proposals as to its composition on the assumption that its powers will be on general lines similar to those recommended by Mr. Glancy.

We would desire that in accordance with the practice in British India in earlier days when the Councils were formed, the Prime Minister should be the President of the Assembly. But we recognize that to act throughout a session both as President, responsible for the procedure of Assembly, and as Leader of the House, responsible in addition to the Prime Minister's duties. We, therefore, recommend that His Highness should appoint another Minister, preferably the Judicial Minister, to preside over the Assembly, and be in permanent charge of the Assembly office. It may be ordered that in the unavoidable absence of the Minister particularly appointed as President, any other Minister may act as President. It is obvious that these duties will demand an officer with full experience in the transaction of official business, and that the election of an untrained non-official cannot yet be contemplated.

In the experimental stage we think that there should be a dissolution in the ordinary course after three years.

The terms of the nominated members, other than of the Ministers and State Councillors, should be the same as that of the elected members.

20. There are five general conditions which must govern any system of Franchise. Two are of minor practical importance and we only follow ordinary usage in saying that :

1. Persons of unsound mind cannot vote,
2. Persons may be disfranchised for corrupt practices at an election.

The other three general conditions are those of :

1. nationality,
2. sex, and
3. age.

There should be no question that every elector must be a State-subject; this is the essential bond of unity in an electorate which is so separated by natural conditions and by religion, and we might add that this is one point on which the majority of our witnesses are agreed. We do not propose that for the purpose of enfranchisement the existing law definiting a State-subject should be changed. Mr. Glancy's remarks on

this point exaggerate the issue and we do not understand his reference to "hereditary—State-subject" or to "domicile in the State for a thousand years." The present definition, if applied to the franchise, would admit persons who have acquired immovable property in the State and have ten years' continuous residence. It is our general principle that the new constitution must be evolutionary; it should rest on existing conditions in the State and not on a priori ideas or on blind imitation of the practice in other countries. If for general reasons, and after hearing the advice of the new Assembly, His Highness the Maharaja Bahadur decides to alter the law that would automatically affect the franchise; but the franchise now must be based on the present definition, and only State-subject of the three classes as now defined should be qualified to vote or to be elected as members.

The same principle leads us to agree with Mr. Glancy that women in general should not be enfranchised. We have a representation from the local branch of the All-India Women's Conference, and some of our Hindu witnesses have favoured women's suffrage. But it is obvious that the majority of the population would not welcome this and we must add the practical consideration that the inclusion of women voters in any large number would increase the administrative difficulties of the first election. At the beginning the most that we can do is to admit women who have a sufficient educational qualification.

As regards age we follow the general practice that a voter must be 21 years old when the electoral roll is published. We note that this means a small reduction in the figures of 'adult males, which we have quoted from the census.

21. Only one witness has urged adult male suffrage, and it is not necessary for us to consider this question either as an immediate issue or as the goal for the future. Adult male suffrage would require at least 1,300 officials of standing to act as presiding officers at the election, besides more than 3,000 clerks. Besides being premature now, it is administratively impossible.

Just as many of the opinions expressed to us about the Assembly have been of no help because witnesses have assigned seats to the different communities by percentages,

without considering what the constituencies actually should be, so the attempt to create an electorate on a fixed percentage of the population as well as on personal qualification has led our witnesses into logical and practical difficulties; one witness, regardless of finance, has proposed that there should be a special electoral census, in order that the Government may ascertain the exact figures of land revenue payment which would qualify precisely 10 per cent of the people, another witness takes the line 10 per cent, should be enfranchised in each district, and that the personal qualifications should be varied accordingly from district to district. We must repeat that 10 percent was an arbitrary figure taken by the statutory Commission as a rough guide in conditions which do not as yet apply to Jammu and Kashmir. The simple fact is that no uniform personal qualifications can give same numerical result all over the country. We must leave these arbitrary figures and base our scheme of qualification on reasoned grounds.

22. We may begin by admitting to the franchise all those whose position is already representative, and who therefore may justly represent their fellows at an election. These are the Zaildars, Safed-Poshes and Lumberdars, who in districts where there are many villages, are very numerous. There are also the religious representatives, Imams, Mufties and Qazis, the Adhisthatas of temples, the Bhais and Granthis of Gurdwaras and ordained Ministers of the Christian Church.

A second group includes those whose prominence or responsibility are shown by the fact that they received titles in the State or in British India, or are receiving pensions of not less than Rs. 10 a month, or are retired or pensioned officers or N.C.Os of the regular military forces. To these we may add, without straining our principle the retired soldiers, who certainly hold a distinguished place among their fellows.

Our third group would include those whose education or subsequent attainments have clearly fitted them for a part in a modern constitutional system. We would enfranchise as such the Lawyers, Doctors, Hakims, Vaids and Schoolmasters, who are actually practising in the State. To these we would add those who have at least passed through the Middle school or an enquivalent educational test, as well as those who have

had higher education.

Lastly there must be the principal mass of electors, who can voice the feelings of the ordinary citizen, but who must be expected to do so with some degree of responsibility. For this purpose property is the only possible test, in this State as elsewhere, but we think it necessary to make the property test a low one, in order that the Government may be quite sure that at an election the ordinary people are really represented. We agree with Mr. Glancy in putting the basic figure for the payment of land revenue as low as Rs. 20, a lower figure than is in force in the Punjab, but, in order to secure an adequate urban electorate we prefer Rs. 600 as the value of immovable property other than land which should qualify a person to give a vote, instead of Mr. Glancy's figure of Rs. 1,000. These qualifications must be supplemented by a similar qualification for occupancy tenants, and by a slightly higher qualification for the holders of Ilaqas, Jagirs, Guzaras and revenue-free land. We add a grazing-fee qualification in order to enfranchise persons of settled habitation whose property is in livestock. We adopt in all these cases the Punjab rule which enables co-sharers to vote if the value of their share would, if partitioned, come within the prescribed limits. We have not delayed the submission of this report in order to camplete or test the figures which we have been collecting of the number of voters which these property qualification would producc; but we are satisfied that the number will not be so great as to make the conduct of the elections too difficult for a limited official staff, whereas lower rates would certainly lead to practical difficulties in some parts of the State. Our scheme would enfranchise more than 10% of the adult male population, and would give to the small revenue payers and the small house holders a great and often a decisive influence on the election. As there can be no doubt that these men are not distinguishable in feeling from the mass of the people, our object would be attained; our electorate would comprise all State-subjects who had raised themselves to a responsible position, and all who were educated, and also a large number of voters who would both be completely in touch with the masses and yet have the responsibility induced by the possession of their small property.

23. We have, in conclusion, to express our views as to the qualification for candidates for election. The object of the election system being to secure the real representation of local opinion, no one should be entitled to be a candidate for a constituency in which he is not resident and registered as an elector; but for this purpose registration in any part of a city should quailfy an elector The object of convening the Assembly being to obtain responsible assistance in legislation, we are justified in raising the age of candidates to 25, agreeing in this with Mr. Glancy and many of our witnesses. Lastly we recommend, in agreement with Mr. Glancy, that every candidate must be albe to read and write the Urdu language, which will be the language in which the Assembly will conduct its business.

24. As a summary of this part of our recommendations we append a draft of the relevent electoral rules, preparing, on established models, rules to govern the detailed procedure of elections, which it is not necessary for us to discuss in the Report.

DRAFT ELECTORAL RULES

1. Every person shall be entitled to be registered as an elector on the electoral roll of a constituency who is not subject to any of the following disqualifications, namely:

(a) is not a State-subject of any class, as defined in notification I—L/1984, dated Jammu, 18th April 1927; or
(b) has not attained the age of 21 years on the first day of the month on which the roll is published; or
(c) has been adjudged by a competent court to be of unsound mind; or
(d) if female, has not obtained the Middle school certificate or any other certificate mentioned in rule 4(7) below or a certificate of having passed some higher examination;and who has the qualifications prescribed for an elector of that constituency in rules 2,3 and 4.

2. A person shall be qualified as an elector,

(a) in a Muslim constituency, who is a Muslim,
(b) in a Sikh constituency, who is a Sikh, and
(c) in any other constituency, who is neither a Muslim nor a Sikh.

3. A person shall be qualified as an elector of that constitueney alone in which he or she ordinarily resides or carries on busi ness.

Provided that no person shall be entitled to have his name entered on the roll of more than one constitueny but he can choose the constituency on whose roll his name may be entered.

4. A person shall be qualified as an elector who has any one of the following qualifications :

(1) is a Zaildar, or Safed-Posh, or Lumberdar, or
(2) is an Imam of a mosque, or Mufti or Qazi, or an Adhisthata of a temple, or a Bhai or Granthi of a Gurdwara, or an ordained Minister of the Christian Church, who has been acting as such for a period of not less than six months prior to the preparation of the electoral rolls, or
(3) is a recognized title-holder, or
(4) is a retired or pensioned officer, non-commissioned officer or soldier of His Highness regular forces, provided that he has not been discharged therefrom with ignominy, or
(5) is a pensioner who receives a pension of notless than Rs. 10 a month from treasury in this State or any other, or
(6) is a Doctor, or Hakim or Vaid, or Lawyer, or School-master actually practising his profession within the State, or

tenancy is divisible by 20 or the value of immovable property is divisible by 600. The co-sharer shall appoint by name the persons so entitled to vote as electors.

6. For the purpose of these rules a person shall be deemed to have owned property or to have paid fees for any period during which the property was owned or the fees paid

by any person through whom he derives litle by inheritance.

6. (1) An electoral roll shall be prepared for every constituency on which shall be entered the names of all persons appearing to be entitled to be registered as electors for that constituency. It shall be published in the constituency together with a notice specifying the manner in which and the time within which any person whose name is not entered in the roll and who claims to have it inserted therein, or any person whose name is on the roll and who objects to the inclusion of his own name or of the name of any other person on the roll, may prefer a claim or objection to the Revising Authority.

(2) The orders made by the Revising Authority shall be final, and the electoral roll shall be amended in accordance therewith and shall, as so amended, be republished in such manner as the Government may prescribe.

7. No person shall vote at an election if on the date on which the poll is taken he is undergoing a sentence of imprisonment or if he has been bound over to be of good behavour and the period of the bond has not yet expired.

(7) has obtained the Middle school cerficate, or a certificate of having passed the Budhiman, Rattan, Adhib, Munshi, Moulvi, or Prajna examination or a certificate of having passed some higher examination, or

(8) is the owner of land assessed to land revenue of not less than Rs. 20 per annum, or

(9) is an Ilaqadar, or

(9) (a) is a Jagirdar, Muafidar, or Guzarkhar holding an assignment of not less than Rs. 20 per annum, or

(10) is a tenant with right of occupancy paying rent of not less than Rs. 20 per annum, or

(11) is the owner of immovable property, other than land, within the State, of the value of not less than Rs. 600, or

(12) pays grazing-fees to the Government of not less than Rs. 20 per annum and is not a Bakarwal.

8. Where two or more persons are co-sharers in land assessed to land revenue, or in an assignment of land-revenue, or in other immovable property, or in a tenancy, every person

shall be qualified as an elector who would be so qualified if his share in such land, property, assignment or tenancy were held separately. The share of any such person who is under 21 years of age shall be deemed to be the share of his father, or if his father is dead, or his eldest brother provided that his father or eldest brother as the case may be, is a co-sharer with him in the property.

If on division, none of the persons would be entitled to vote, any one or two or such number of them shall be entitled to vote as the number of times the total revenue or assignment of land-revenue or rent of

9. A person shall be eligible for election as a member of the Assembly for a constituency if he is;

(a) over 25 years of age, and
(b) can read and write the Urdu language, and
(c) is registered as an elector for that constituency, or if the constituency is an urban constituency is registered as an elector in the city of which the constituency forms a part, and
(d) has ordinarily resided or carried on business in the constituency or city for the twelve months preceeding the first day of the month on which the roll is published.

Note:- For the puspose of this rule, a person may be presumed to reside in a coustituency if he owns a family dwelling house or a share in family-dwelling house in the constituency, and that house has not during the twelve months been let on rent either in whole or in part.

10. A person against whom a conviction by a criminal court for an offence punishable with a sentence of imprisonment for a period of more than six months is subsiting shall, unless the offence of which he was convicted has been pardoned, not be eligible for election for five years from the date of the expiration of the sentence.

11. A person shall not be eligible for election if he is an undischarged insolvent, or being a discharged insolvement

has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part.

12. The name of any person who has been found guilty of a corrupt practice, under any rules in force regarding elections, shall be removed from the electoral roll, and shall not be registered on an electoral roll for a period of five years from the date of the finding, and such person shall not be eligible for election to the Assembly for such period.

(Sd)	Barjor Dalal	President
(,,)	Kartar Singh	Member
(,,)	Abdul Qayoom	Member
(,,)	Ivo Elliott	Member

Jammu :
30th December, 1933

52. Regulation of 1991.

CONSTITUTION ACT, 1934

Whereas it is my declared intention to provide for the association of my subjects in the matter of legislation and administration of the State, I hereby promulgate the following Regulations:

1. This Regulation may be styled the Jammu and Kashmir Regulation No. 1 of 1991 and it shall come into force on 7th Baisakh 1991.

2. In this Regulation unless there is something repugnant in the subject or context:

"His Highness" means His Highness the Maharaja Bahadur of Jammu and Kashmir.
"State" means the State of Jammu and Kashmir.
"Council" means the Council of Ministers of Jammu and Kashmir hereinafter referred to.
"Assembly" means the Legislative Assembly of the State constituted under this Regultion.

"Official" and "Non-Official" means respectively a person who is or who is not in the Civil or Military Service of the State provided that rules under this Regulation may provide for the holders of such offices or any of them as may be specified in the rules not being treated for purposes of this Regulation as officials.

3. All powers, legislative, executive and judicial in relation to the State and its Government are hereby declared to be and to have been always inherent in and possessed and retained by His Highness the Maharaja of Jammu and Kashmir and nothing contained in this Regulation shall affect or be deemed to have affected the right and prerogative of His Highness to make and pass Regulations, Proclamations and Ordinances by virtue of his inherent authority.

4. The Government of the State shall be conducted in the name of His Highness and all powers and authority under this Regulation shall be exercised by and in the name of His Highness.

5. The Council of Ministers of the State shall comprise the Prime Minister for the time being and such other Ministers of the State as His Highness may appoint. The Prime Minister, who shall be the President of the Council and the other Ministers shall hold office during His Highness' pleasure.

6. Subject always to the provisions of Section 3 and the exercise in his discretion of the powers and authority inherent as aforesaid in His Highness and subject also to such rules of business and allocation of portfolios and such other directions as to consulations with or reports and confirmation by His Highness on specified matters His Highness may give from time to time by general or special orders in that behalf, the superintendence, direction and control of the Civil Administration and Government of the State shall be vested in the Council.

7. The following subjects shall be deemed to be reserved from this Regulation and it shall not be lawful for the Council or the Assembly to consider, deal with or enact any measure relating to or affecting :

(a) His Highness or any Member of the Royal Family or

the management of their Household;

(b) relations, treaties, conventions or agreements between the State and His Majesty the King Emperor of India or the Government of India or with Foreign powers or the Government of any State in India now subsisting or in force or hereafter to be established or made;

(c) matters concerning the Gilgit and Ladakh Frontiers;

(d) rights specifically granted to Ilaqadars or Jagirdars by their Sanads;

(e) the organization, discipline and control of the State Army;

(f) the State Departments now under the charge of the Minister-in-Waiting on His Highness and specified in the Schedule hereto (Schedule 1);

(g) the Dharmarth Department; and

(h) the provisions of this Regulation and the Rules thereunder and their repeal or modification.

8. The Council, with the previous consent of His Highness and subject to the provisions of Section 6, may make rules for the conduct of executive business and may, in default of any directions given by His Highness provide that the authority of the Council may be delegated to a Minister in respect of any subject or class of subjects.

9. All rules and orders issued prior to the enactment of this Regulation shall remain in force excepting in so far as they are amended or repealed by this Regulation.

10. The Legislature of the State shall consist of:

(a) the Council; and

(b) the Assembly;

and subject to the provisions of Section 7, no legislative measure shall be deemed to have been passed unless it has been passed by the Council of the Assembly under the provisions hereinafter set out and has received the assent of His Highness.

11. The Council may provide by Regulation for any matter concerning the Public Department or the Public Revenue of

the State including the imposition of any charge thereon or the maintenance, alteration or imposition of any tax or duty.

12. Notwithstanding anything contained in this Regulation the Council may in cases of emergency or where immediate legislation is required in any matter affecting the peace and good Government of the State, submit to His Highness an Ordinance and such Ordinance on being assented to by His Highness shall have the force of law for a period not exceeding six months from the date of promulgation.

13. Subject to the provisions herein contained the Assembly shall have power to make Regulations for all persons, for all Courts and for all places and things within the State.

14. The Assembly shall consist of Members nominated or elected under provisions of this Regulation and of the Jammu and Kashmir Assembly Electoral Regulations, issued under his Highness Command by endorsement No. P. B. 157 of 5th March 1934. The total number of non-elected Members shall be 42 and shall include the Ministers for the time being and officials nominated by virtue of their office and 16 State Councillors summoned by name by His Highness for the constituencies and communities specified in the attached schedule (Schedule II) The number of Officials nominated by virtue oftheir office shall not exceed 12 including the Ministers. The number of elected Members shall be 33 and they shall be elected for the constituencies and from the communities specified in the Jammu and Kashmir Assembly Electoral Regulations.

15. The Council may make rules for the following purposes:

(a) as to the term of office of nominated Members of the Assembly and the manner of filling causal vacancies amongst them ;

(b) as to the conditions under which and the manner in which persons may be nominated as Members of the Assembly ;

(c) as to the qualifications of electors, the constitution of constituencies and the method of election for the Assembly and any matter incidental or ancillary there to;

(d) as to the qualification for being elected or being nomi-

nated as Members of the Assembly;

(e) as to the final decision of doubts or disputes as to the validity of an election; and

(f) as to the manner in which such rules should be carried into effect.

16. The Council shall provide by rules under this Regulation for regulating the course of business and the preservation of order in the Assembly; for number of Members required to constitute a quorum and for prohibiting or regulating the asking of questions on and the discussion of any subjects specified in the rules.

17. The President of the Assembly shall be appointed by His Highness for such term and on such salary as he may fix and he may remove the President from office and fill casual vacancies in that office from time to time. The President's place during temporary absences shall be taken by such persons as His Highness may direct by general or special order in that behalf.

18. Every Assembly shall continue for three years from its first meeting provided that:

(a) the Assembly may sooner be dissolved by His Highness;

(b) such period may be extended by His Highness if in special circumstances he so deems fit: and

(d) after the dissolution His Highness shall appoint a date not more than six months after the date of the dissolution for the next Session of the Assembly.

19. There shall be two Sessions of the Assembly in the year as far as possible in the months of October at Srinagar and in March at Jammu and His Highness may also appoint such other times and places for holding an ordinary or special Session as he thinks fit.

20. His Highness may from time to time prorogue the Sessions of the Assembly.

21. Any Session of the Assembly may be adjourned by the person presiding.

22. All questions in the Assembly shall be determined by a majority of votes of the Members present other than the

presiding Members who shall have and exercise a casting vote in case of an equality of vote.

23. The powers of the Council or the Assembly may be exercised notwithstanding any vacancy among the Ministers or the Assembly.

24. An official shall not be qualified to be elected as a Member of the Assembly or to be nominated for any of the seats specified in Schedule II and if an elected Member or a Member nominated for one of such seats accepts office, his seat shall become vacant.

25. The seat of any Member of the Assembly shall become vacant on his being sentenced for an offence punishable with imprisonment for a term of six months or more or on his being interned or externed under the orders of a Magistrate or the Council of His Highness.

26. It shall not be lawful for the Assembly to make, repeal or alter any Regulation referred to in Section 12.

27. It shall not be lawful at any meeting of the Assembly to consider or enact any measure imposing any disability on any community as such.

28. It shall not be lawful, without the previous sanction of His Highness and without the consent in writing of not less than two-thirds of the Members of the Assembly from the community affected, to introduce, consider or enact any measure affecting the religious rights, usages, endowments or personal law of any community.

29. When any bill has been introduced or is proposed to be introduced or any amendment to bill is moved or proposed to be moved or any resolution is moved or proposed to be moved or any question is proposed to be asked, His Highness may declare that the bill or any clause of it or amendment or the resolution or question affects the safety or tranquility of the State or any part thereof and may direct that no proceedings shall be taken by the Assembly in relation to the bill or any clause of it or amendment or resolution or question and effect shall be given to such direction.

30. No measure shall be deemed to have been passed by the Assembly until and unless His Highness has signified has assent thereto.

31. Where the Assembly refuses leave to introduce or fails

to pass in a form recommended by the Council any Regulation, His Highness may declare that the Regulation is essential for the good Government safety or tranquility of the State and such measure shall, on the signification of His Highness' assent become a Regulation as if it has been passed by the Assembly.

32. Subject and without prejudice to the provisions herein contained, His Highness may, where a measure has been passed by the Assembly, return the same for reconsideration by the Assembly.

33. The President shall refuse leave to move a resolution or to ask a question which, in his opinion, affects any matter reserved under the provisions of this Regulation, or which affects the religious rights, usages, endowments or personal law of any community and is not moved or asked by a Member of that community.

34. Standing Orders may be made and altered by the Assembly providing for the conduct of business and the procedure to be followed in the Assembly. Any Standing Order which is repugnant to the provisions of this Regulation or to any rules made thereunder shall, to the extent of that repugnancy but not otherwise, be void.

35. Subject to the rules and Standing Orders of the Assembly, there shall be freedom of speech in the Assembly and no person shall be liable to any proceedings in any Court of Law by reason of his speech or vote in the Assembly or by reason of anything contained in any official report of the Assembly.

36. The Council shall cause a copy of the detailcd statement of the estimated annual Revenue and Expenditure of the State and of the Ilaqas exercising Criminal and Civil Juridisction to be laid on the table of the Assembly first day of the Session to be held in each year in the month of October or any of the subsequent months if a meeting be not held in October. The President shall provide for the meeting of the Assembly on not fewer than seven days for the consideration of the statement after a week from the commencement of the said Session of the Assembly. During the time so provided and subject to the provisions hereinafter contained and to any rules or Standing Orders, any Member of the Assembly may āsk a question or move a resolution regarding any appropriation of revenue or

moneys proposed in the statements or regarding the form in which the statement is laid on the table.

37. If such a resolution is supported by a majority of votes, the President shall, before the Budget is passed, declare what action, if any, the Council will take on the resolution.

38. Before any new tax or duty is imposed or the rate of any existing tax or duty is altered by any Ordinance, Regulation or rule under this Regulation, the Council shall cause a copy of such Regulation, Ordiance or rule to be supplied to each Member of the Assembly and the President shall allot a day or days for the consideration of such proposals in the Assembly and any Member may then move any resolution on the proposals or ask any question regarding them and such tax or duty shall not be imposed or altered until the Council has taken into consideration any resolution regarding it which may have been passed by a majority of votes in the Assembly.

39. The following matters shall not open for discussion and no resolution may be moved or question asked in respect of these at the time when the said statement is under consideration:

(a) expenditure on matters reserved from the cognizance of the Assembly under Section 7;
(b) expenditure which is obligatory under any law;
(c) pensions and gratuities granted by His Highness or with his sanction or under the rules sanctioned by His Highness;
(d) interest on loans and sinking fund charges; and
(e) expenditure which may be classed by His Highness or the Council as political.

40. If any question arises whether any proposed appropriation of revenue or moneys does not relate to any matter not liable to be voted upon by the Assembly, the decision of the President shall be final.

41. No proposal shall be made or resolution moved for the appropriation of any revenue or moneys for any purpose excepting by and on the recommendation of the Council.

42. It shall not be lawful for any Member to introduce in

the Assembly, without the previous sanction of the Council, any measure affecting the public revenues of the State or imposing any charge on such revenues.

43. Where any Ordinance has been passed under Section 12 of this Regulation, the Council shall cause a copy of it to be delivered to such Member of the Assembly.

44. If any dispute arises as to the interpretation or the carrying out of any of the provisions of this Regulation or the rules made thereunder, the decision of the Council, subject to the provisions of Section 3, shall be final.

45. Communication by His Highness to the Assembly may be made (a) in person, (b) by message sent through the Prime Minister or other Minister, or (c) by the President or other person presiding under the Provisions of Section 17.

46. Every person who is elected or nominated to be a Member of the Assembly shall before taking his seat make at a meeting of the Assembly, an oath of his allegiance to His Highness in the following form, namely:

> I.....have been elected/nominated Member of this Assembly do solemnly swear that I will be faithful and bear true allegiance to His Highness Raj Rajeshwer Maharajadhiraj Shri Maharaja Harisingh Ji Bahadur, Indar Mahindar Sipar-i-Saltanat-i-Inglishia, G.C.S.I., G.C.I.E., K.C.V.O., of Jammu and Kashmir his heirs and successors and that I will faithfully discharge the duty upon which I am about to enter.

Every person who is appointed to be Member of the Council shall before entering on his office make the oath of allegiance in the same form.

SCHEDULE I
(See Section 7 (f))

The State departments under the Minister-in-Waiting and now styled as:

1. Ceremonial, Toshakhana and State Garage.
2. Place Guards and State Stables.

3. Palaces.
4. Reception.
5. Shikarkhana.

Provided that His Highness may at any time re-name or re-classify and of the items now included in the departments so styled.

SCHEDULE II
(See Section 14)

Constituencies for which members shall be nominated.

Number of members	*Constituency*	*Community*
	I. To be nominated by His Highness.	
2	Ladakh Wazarat	Buddhist
1	Skardu Tehsil	Muslim
1	Kargil Tehsil	Muslim
1	Gilgit Wazarat	Muslim
1	North Kashmir Wazarat	Muslim
1	South Kashmir Wazarat	Muslim
1	Muzaffarabad Wazarat	Muslim
1	Jammu Wazarat	Hindu-(Megh)
1	Udhampur Wazarat	Hindu-(Megh)
1	Srinagar City	Hindu other than Kashmir Pandit
1	Wazarats Jammu, Udhampur, Reasi, Kathua, Kashmir South and Sri Partapsinghpura Tehsil.	Sikh.
	II. To be nominated by	

		His Highness on the recommendation of the Ilaqadar of Poonch.	
1.		Ilaqa Poonch	Hindu
	III.	To be nominated by His Highness on the recommendation	
1.		of Ilaqadar of Chenani.	
1.		Ilaqa Chenani	Hindu

53. Jammu and Kashmir Praja Sabha Election Rules.[1]

(Extract)

QUALIFICATIONS OF ELECTORATES

I. No person shall be entitled to be registered as an elector on the Electoral Roll of a general or special constituency who:

(a) is not a State-subject to any class as defined in Notification I-L/1984, dated Jammu the 18th April 1927; or
(b) has not attained the age of 21 years on the first day of Baisakh of the year in which the general elections are held; or
(c) has been adjudged by a competent court to be of unsound mind; or
(d) if a female, has not passed the Third Middle Examination or any other examination mentioned in Rule 11(7).

II. Every person who is not subject to any of the disqualifications mentioned in rule 1 shall be entitled to be registered as an elector in the Electoral Roll of a general or special constituency if he resides or carries on business within that constituency:

(i) In the case of a general constituency:

1 is a Zaildar, or Safed-Posh, or Lambardar, and is not under suspension, or

2. is an Imam of a Mosque or Mufti or Qazi or an Adhishthata of a temple, or a Bhai or Granthi of a Gurdwara, or an ordained Minister of the Christian Church who has been acting as such for a period of not less than six months prior to first Baisakh of the year in which the general elections are held, or

3. is a recognised title-holder, or

4. is a retired or pensioned Officer, non-commissioned Officer or soldier or His Majesty's or His Highness' regular forces provided that he has not been discharged therefrom with ignominy.

Explanations

The term "regular forces" used in clause 4 of the foregoing Rule shall include the subjects of Jammu and Kashmir State serving as commissioned officers and Indians of other ranks of the Royal Indian Army Service Corps and also the commissioned officers and Indian other ranks of the Animal and Mechanical Transport Sections of the Jammu and Kashmir Army, or

5. is a pensioner who receives a pension of not less than Rs. 10 a month from a Treasury in the State, or any other treasury, or

6. is a Doctor or Hakim or Vaid, or Lawyer, or School master actually practising his profession within the State, or

7. has passed the Third Middle Examinaton, or passed the Budhiman, Rattan, Adib, Munshi, Moulvi, or Prajna examination, or some higher examination, or

8. pays a sum of not less than Rs. 20 per annum under one or more of the following heads:

(a) land revenue on account of land owned by him;

(b) rent on account on land held by him as a tenant with a right of occupancy;
(c) grazing fees payable to the Government, or

9. is a Jagirdar, Muafidar or Guzarakhar holding an assignment of not less than Rs. 20 per annum, or
10. is the owner of immovable property, other than agricultural land, within the State, or of a boat or boats of the value of not less than Rs. 600, or
11. pays income-tax, or
12. has throughout the twelve months preceding the date of the notification occupied as tenant in the constitueney immovable property, not being land assessed to land revenue, of an annual rental value of not less than Rs. 60.

Explanations

If any land or immovable property has been in possession of a mortgage for the whole of the year before the preparation of the Electoral Roll, such mortgagee and not the real owner shall be deemed to be the owner for the purpose of sub-rules 8(a) and (10).

Provided that no person shall be qualified as an elector :

(a) in a Muslim constituency if he is not a Muslim;
(b) in a Sikh constituency if he is not a Sikh;
(c) in a Hindu constituency if he is either a Muslim or a Sikh.

(ii) in the case of a special constituency:

1. In case of the Jammu and Kashmir Tazimi Sardars constituencies, is a Tazimi Sardas.
2. In case of the Jammu and Kashmir Jagirdar, Muafidar or Mukarridar constituencies, is a Jagirdar, Muafidar or Mukarridar holding a Jagir, Muafi or Mukarri from the State of not less than Rs. 500 per annum.

3. In case of the Jammu and Kashmir Land-holders constituencies, is a holder of any land assessed to land revenue of not less than Rs. 250 per annum.
4. In case of the Jammu and Kashmir pensioners Constituency is a pensioner receiving Rs. 100 or more as pension.

Provided that no person shall be entitled to have his name entered on the roll of more than one special constituency of the same class but he can choose the constituency on whose roll his name may be entered.

Explanations

1. Where a Jagir, Mukarrari, Muafi or land is held Jointly by members of a joint family, the family shall be adopted as the unit or deciding whether any qualification exists and if it exists, the person qualified shall be, in the case of a joint Hindu family, the Manager thereof, and in the case of any other joint family the member thereof authorised in that behalf by the family.
2. For the purpose of this rule, a person may be presumed to reside in a consitituency if he owns a family dwelling-house in the constituency and that house has not, during the twelve months preceding the date of the notification been let on rent.

III. 1. Where two or more persons are co-sharers in land assessed to land revenue, or in an assignment of land revenue, or in other immovable property, or in a tenancy, or in a Jagir, Mukarrari or Muafi every person shall be qualified as an elector who would be so qualified if his share in such land, property, assignment or tenancy were held separtely. The share of any such person who is under 21 years of age shall be deemed to be the share of his father, or if his father is dead, of his eldest brother, provided that his father or eldest brother, as the case may be, is a co-sharer with him in the property.

of times, the total revenue, assignment of land revenue or rent of tenancy is divisible by 20 or in the case of immovable property other than agricultural land as the number of time, the value of such property is divisible by 600;

(b) in the case of special constituencies, the number of times the total of the amount of Jagir revenue or assignment of revenue, as the case may be is divisible by 500 in the case of constituencies of the Jammu and Kashmir Jagirdars, Muafidars and Mukarraridars or by 250 in the case of constituencies of Jammu and Kashmir land-holders. The co-sharers shall appoint by name the persons so entitled to vote as electors.

IV. For the purposes of these rules a person shall be deemed to have owned property or to have paid fees for any period during which the property was owned or the fees paid by any person trough whom he derives title by inheritance.

V. No person shall be entitled to vote at any election if on the date on which the poll is taken he is undergoing a sentence of imprisonment, or if he has been bound over to be of good behaviour and the period of the bond has not yet expired, or if he is disqualified for membership of the Praja Sabha.

QUALIFICATIONS OF CANDIDATES.

VI. A person shall be eligible for election as member of the Praja Sabha for a general or special constituency if he is not subject to any of the disqualifications contained in section 28 of the Act, and

1. can read and write the Urdu language in any script, and
2. is registered as an elector for that constituency, or, in the case of a general constituency, for any other constituency in the Province, and in the case of a Muslim or Sikh constituency, he is himself a Muslim or Sikh, as the case may be, and in the case of a Hindu constituency, he is not a Muslim or Sikh.

Explanations.

For the purposes of this rule a Province shall mean either the Kashmir Province or the Jammu Province (inclusive of the Jagirs or Poonch and Chenani) as the case may be.

54. Order to Convene the first Session of the Praja Sabha No. 57 of 26th September, 1934.

Uuder Rule 4 of the Jammu and Kashmir Legislative Assembly Rules of Business and Procedure, we hereby appoint Wednesday the 17th October 1934 (Ist of Katik 1991) as the day, and the Rajgarh Palace, Srinagar, as the place, for holding the Ist session of the first Assembly of Jammu and Kashmir.

The time of the meeting will be notified later.

Sd/- (Hari Singh)
Maharaja.

55. Vernacular names for the Ministers order o.N 99, 5th October, 1934.

In future the bodies and persons mentioned below shall be designated as follows:

English	Vernacular
Executive Council	Amatya Mandal
Prime Minister	Pradhan Amatya
Ministers	Amatya

These names when used by persons will be placed after and not before the name of the individuals using them.

Sd/- (Hari Singh)
Maharaja.

56. Appointment of Ministers to Praja Sabha order No. 132, 13th October, 1934.

In addition to the President of the Assembly I hereby appoint the following Ministers to be members of the State Assembly:

1. Colonel E.J.D. Colvin, C.I.E., Prime Minister
2. Major General Nawab Khusru Jung Bahadur, Minister-in-Waiting
3. Mr. Wajahat Hussain, I.C.S., Home Minister
4. Mr. V.N. Mehta, I.C.S., Revenue Minister
5. Rao Bahadur Thakur Kartar Singh Ji, Finance Minister

Sd/- (Hari Singh)
Maharaja.

57. Appointment of official Members to Praja Sabha order No. 133, 13th October, 1934.

In addition to the Ministers I hereby appoint the following to be official members of the the Assembly until further orders:

1. K.B. Sheikh Abdul Qayum, B.A., L.L.B., Judge of the High Court
2. Captain, Kanwar Hira Singh, Political Secretary
3. Lala Haveli Ram, General Secretary
4. Rai Bahadur, Pandit Anant Ram, Director Land Records
5. Mr. P.D. Pande, Accountant General
6. Khan Sahib, Mohammed Afzal Khan, Governor of Kashmir

Sd/- (Hari Singh)
Maharaja.

58. Inaugural Address of the Maharaja to the Praja Sabha, 1934.

We recently expressed our wish and pleasure that means be designed whereby our people may be more closely associated in our Councils; and in pursuance of our commands thus declared, those persons appointed by us to give practical shape to our wishes have submitted their recommendations which have been accepted by us.

The assemblage here present this day is the outcome of their labours to give outward form to our behests. It is the first of its kind in recent times; but, of old, the duties which you will have to perform, were duties which were always shouldered, and loyally discharged, by the "Praja" ever since the institution of monarchy came into being in this ancient land of India. To acquaint themselves with the needs of their people the kings of old have caused to be performed, and maintained, bodies from village Panchayats upto assemblies of this nature, composed of the representatives of the various interests in their kingdoms, our own records bear witness to this.

For our part we declare that Divine Provinence having laid upon us the sacred duty to care equally for all those committed to our guardianship, we can recognize no difference between one person and another or between one class and another. They are all our beloved children, whatever their persuasion or creed, and we desire to protect, foster, guide, and advance them by every means in our power.

Out of the great love and affection we bear our beloved subjects, we have called you to do your part in working for the well being of this State. We have appointed your task and indicated the lines of the service you can render to yourselves and to your Ruler whose ordained duty it is to safeguard and promote your best interests. We desire you to enter upon the discharge of your responsibilities in such, a way that your behaviour may be an example to others and your achievements at once a model for them to emulate and a monument to your own earnestness and your loyalty to the State that you serve.

No one here today can fail to realize that both in theory

and practice, the existence of a stable society and a peaceful community involves, and presupposes, a head, whose sway must be ungudgingly accepted, and whose behests must be loyally carried out, if the harmony and orderly progress of the community is to be achieved. In recent times, certain nations have departed from this, and the world has witnessed the sorry spectacle of chaos and anarchy. The fate of these nations should provide us with an object lesson. Those who have chosen precipitately to break from their ancient moorings have not yet found the haven of peace; they are still floundering in stormy waters. Peace and harmony are the essential conditions of progress and prosperity, and all can see that the world of the present day, after experiencing the storm and stress of unsettlement, is once again discovering the axiom that peaceful progress, even if slow, is in the long run the best indeed, the only, way.

Beware of impassioned utterances so much in vogue today. They invariably formulate unbalanced and unpractical ideals that are as much divorced from decisive factors and stern realities as they are foreign to the genious of our race. Cultivate sobriety of thought and expression, shunning all that is disruptive, and devote all your energies to creative and constructive work which alone can help to ameliorate the lot, and conduce to the happiness of those whose spokesmen you have undertaken to be.

With these words of counsel and admonition by which we hope to plant the feet of our beloved subjects on the path of solid progress and achievement, we hereby declare this Praja Sabha (State Assembly) duly and well inaugurated and opened.

May the Dispenser of all Bounties in His infinite mercy and wisdom bless your labours, and may those labours, conducted in perfect harmony, redound to the credit of our subjects whose first chosen representatives you are, and to the glory of our unique heritage and of the body politic.

59. Resolution of the Working Committee of the Indian National Congress, 29 July to 1st August, 1935.

Although the policy of the Congress regarding the State in India has been defined in its resolutions, a persistent effort is being made by or on behalf of the people of the States to get a fuller declaration of the Congress policy. The Working Committee therefore issues the following statement concerning the policy of the Congress with regard to the Princes and the people of the State:

The Indian National Congress recognises that the people in the Indian States have an inherent right to Swaraj no less than the people of British India. It has accordingly declared itself in favour of establishment of representative responsible government in the States and has in that behalf not only appealed to the Princes to establish such responsible government in their States and to guarantee fundamental rights of citizenship, like freedom of person, speech, association, of the press, to their people but has also pledged to the States people its sympathy and support in their legitimate and peaceful struggle for the attainment of full responsible government. By that declaration and by that pledge the Congress stands. The Congress feels that even in their own interests the Princes will be well advised to establish at the earliest possible moment full responsible government with their States carrying a guarantee of full rights of citizenship to their people.

It should be understood, however, that the responsibility and the burden of carrying on the struggle within the States must necessarily fall on the States people themselves. The Congress can exercise moral and friendly influence upon the States and this it is bound to do wherever possible. The Congress has no other power under existing circumstances although the people of India whether under the British, the Princes or any other power are geographiealy and historically one and indivisible. in the heat of eontroversy the limitation of the Congress is often forgotten. Indeed any other policy will defeat the common purpose.

With regard to the impending constitutional changes it has been suggested that the Congress should insist upon certain amendments of that portion of the Government of India Bill which deals with the relation of the Indian States to the Indian Federation. The Congress has more than once categorically rejected the entire scheme of constitutional reforms on the broad ground of its not being an expression of the will of the people of India and has insisted on a Constitution to be framed by a Constituent Assembly. It may not now ask for an amendment of the scheme in any particular part. To do so would amount to a reversal of the Congress policy.

At the same time it is hardly necessary to assure the people of the State that the Congress will never be guilty of sacrificing their interests in order to buy the support the Princes. From its inception the Congress has stood unequivocally for the rights of the masses of India as against any vested rights in conflict with their true interests.

60. Presidential Address of Sheikh Mohamad Abdullah, Muslim Conference, March 26, 1938,

(Extract)

Like us the large majority of Hindus and Sikhs in the State have immensely suffered at the hands of the irresponsible government. They are also steeped in deep ignorance, have to pay large taxes and are in debt and starving. Establishment of responsible government is as much necessity for them as for us. Sooner or later these people are bound to join our ranks. No amount of propaganda can keep them away from us.

The main problem therefore before us is to organise joint action and a united front against the forces that stand in our way in the achievement of our goal. This will require re-christening our organisation as a non-communal political body and introducing certain amendments in its constitution and its rules.

I reiterate today what I have said so often. Firtsly, we must end communalism by ceasing to think in terms of Muslims

and non-muslims when discussing our political problems. Secondly there must be universal suffrage on the basis of joint electorate, without these two democracy is lifeless.

You complain that the Hindus belonging to the vested interests are reactionary and stand in the way of our progress. But have we not had the same experience in the case of capitalist Muslim also? It is significant as well as hopeful that in spite of many difficulties in their way some non-muslims have coopetated with us though their number is very small. Their sincerity and moral courage make us feel their strength. We must, therefore, open our doors to all such Hindus and Sikhs, who like ourselves believe in the freedcm of their country from the shackles of an irresponsible rule

61. Resolution of the Working Committee Muslim Conference June 28, 1938

(*Extract*)

Whereas in the opinion of the working Committee the time has now come when all the progressive forces in the country should be rallied under one barner to fight for the achievement of responsible goverpnment, the Working Committee recommends to the General Council that in the forthcoming session of the Conference the name and constitution of the organisation be so altered and amended that all such people who desire to participate in the political struggle may easily become members of the Conference irrespective of their caste, creed or religion.

62. National Demand, 1938.

As is now well known there is a nation-wide movement afoot among the people of Jammu and Kashmir State, to bring about a complete change in the social and political outlook of the people. This Movement is not confined to any particular community or section of the public but all classes of people

have begun participating in it with the fullest consciousness of the issues it involves. But we do make it perfectly clear at the very outset that our loyalty to His Highness' person and throne is unswerving and needs no reiteration.

The ultimate political goal of this movement is the achievement of the complete responsible government under the aegis of His Highness the Maharaja Bahadur. But as sponsors of this national movement, we feel that it is our bounden duty to acquaint all our countrymen as also others who are interested in it of the immediate objective we have in view.

Our Movement is essentially a movement of peace and good-will. Immediately, it aims at securing the elementary and basic rights of citizenship. It shall certainly try to bring about such a state of affairs in this country as would make it possible for even the humblest subject of His Highness to contribute to the making of his own destinies. Our demands are modest, but they have the force of reason and justice behind them. Not that we are not conscious of our limitations; not that we are not fully aware of the fact that the Government knows its mind and has resources as its disposal to enforce its will. But in the soul-stirring words of Pandit Moti Lal Nehru : "However much we may be enfeebled in body, our souls have never been nor will ever be killed." Our Movement has a gigantic urge behind it. It is the urge of hunger and starvation which propels it onwards in most adverse circumstances.

The ever-growing menace of unemployment amongst our educated young men and also among the illiterate masses in the country, the incidence of numerous taxes, the burden of oxorbitant land-revenue, the appalling waste of human life due to want of adequate modern medical assistance, the miserable plight of uncared-for thousands of labourers outside the state boundaries and in face of all this the patronage that is being extended by the Government in the shape of subsidies and other amenities to outside capitalists as also the top-heavy administration that daily becomes heavier, point to only one direction that the present conditions can never be better as long as a change is not made in the basic principles that are underlying the present system of Government.

Our cause is both righteous, reasonable and just. We

want to be the makers of our own destinies and we want to shape the ends of things according to our choice, of course, under the august patronage of His Highness. This we cannot do, so long as a healthy change is not effected in the present system of Government. We have also come to the conclusion that without such a change it is impossible for the communities individually or the country collectively to progress. We are, therefore, of this firm belief that the Government of His Highness should, before long, be modified on the following lines :

(a) the present system of administration in the State shall be replaced by Responsible Government subject to the general control and residuary powers of His Highness the Maharaja Bahadur as hereinafter mentioned;

(b) the Ministry shall be responsible to the Jammu and Kashmir Legislature and shall have, subject to such responsibility power to control the expenditure of the revenues of the State and also to make such grants and appropriation of any part of those revenues or of any other property which is at present under the control or disposal of the Council as reserved expenditure, save and except the following which shall remain under the control of His Highness the Maharaja Bahadur : (1) Expenditure of the Military Services (2) Expenditure classed Political and Foreign (3) Payments of all debts and liabilities hitherto lawfully contracted and incurred by His Highness-in-Council on account of Government of Kashmir (4) The Dharmath Trust;

(c) the principle of responsibility to the Legislature shall be introduced in all the branches of administration of the Government subject to general control, reservations and residuary powers vested in His Highness in respect of control of Military, Foreign and Political Affairs etc., provided that the proposal of His Highness for appropriations of any revenues or monies for Military or other expenditure for Foreign and Political purposes shall be submitted to the vote of the Legislature, but that His Highness shall have power notwithstanding the vote of the Assembly to appropriate up to a fixed

maximum any sum His Highness may consider necessary for such expenditure;

(d) the Legislature shall consist entirely of members elected by constituencies formed on the system of the adult franchise. Provision should be made for the representation of labour, trade, landlords and educational interests in the Legislture by means of election;

(e) the election to the Legislature shall be made on the basis of joint-electorates; seats should be reserved for the minorities, and all other safeguards and weightages should be guaranteed to them in the constitution for the protection of their legitimate linguistic, religious, cultural, political and economic rights according to the principles enunciated, accepted or acted upon by the Indian National Congress from time to time. In addition to the above the religious rights and sentiments of all the communities should always be respected and not interfered with;

(f) all the subjects of the State, without distinction of creed and caste shall be admitted for services in all armier of defence and for that purpose His Highness shall be assisted by a Minister responsible to the Assembly; and

(g) no subject of His Highness shall be liable to suffer in liberty, life, property or of associations and free speech or in respect of writing except under sentence by an ordinary court of justice and as a result of lawful and open trial.

All this cannot be given for the mere asking. It requires wise statesmanship from the side of the Government. Our earnest desire is to avoid a strife. Let the Government make an announcement accepting the above principles and if His Highness' Government is pleased to discuss these principles with us we shall certainly and whole-heartedly co-operate for this purpose. We are sure that if this is done there will reign peace all around.

(Sd.) Sh. Mohammad Abdullah, the President of the Kashmir Muslim Conference

(Sd.) M.M. Sayeed, Member Kashmir Assembly

(Sd.) G.M. Sadiq, Member Kashmir Assembly

(Sd.) Main Ahmad Yar, Member Kashmir Assembly
(Sd.) M.A. Beg, Member Kashmir Assembly
(Sd.) Pandit Kashyay Bhandu, Editor, The Kesari
(Sd.) Pandit Prem Nath Bazaz
(Sd.) S. Budh Singh
(Sd.) Pandit Jia Lal Kilam
(Sd.) Ghulam Mohammad Bakshi
(Sd.) Pandit Sham Lal Saraf
(Sd.) Dr. Pandit Shambhoo Nath Peshin

63. Resolution State's People's Conference, Ludhiana Session, 1939 on the treaties of Indian Princes with the Paramount Power.

Whereas great stress has been laid on old treaties between the British power and the States and attempts have been made to use these treaties to perpetuate autocracy and the semifeudal order which so long prevailed in the States and obstruct the progress of the people, it is necessary to point out the real character of these treaties, the manner and circumstances under which they were made, the person who made them, and the interpretations placed on them in later years. Out of 562 States in India only forty have such treaties and, these were usually made after a conflict between the officers and agents of the East India Company and persons who had no status of independence, but who had come to exercise authority over part of the country, after the collapse of the central authority in India, which resulted from the fall of the Mughal empire. The treaties were made without any reference to or regard for the people and applied to then existing circumstances. Gradually, as these circumstances changed they ceased to have any importance, and many of them were ignored or even completely abrogated long ago by the practice of the Political Department of the Government of India, which varied and developed with the changing policy of the Paramount Power. In any event the treaties made over a century ago cannot be considered binding on the people of the States at a time when conditions have entirely changed. The treaties are now used by

the Paramount Power to intervene in the struggle for freedom in the States in favour of the Rulers, and the obligations of this power to protect the people from misrule and oppression is ignored.

This conference strongly of opinion that these treaties should be forthwith ended as being completely out of date and inapplicable to present conditions, and it calls upon the Paramount Power to refuse help to misrule and who attempt to crush the movement for freedom in these States.

64. Pandit Jawaharlal Nehru's remarks on treaty rights of Princes in his Presidential address at Ludhiana Session in 1939.

We are told now of the so called independence of the States and of their treaties with the Paramount Power which are sacrosanct and inviolable and apparently must go on for ever and ever. We have recently seen what happens to international treaties and the most sacred of convenants when they do not suit the purpose of Imperialism. We have seen these treaties torn up, friends and allies basely deserted and betrayed and the pledged word broken by England and France. Democracy and freedom were the sufferers and so it did not matter. But when reaction and autocracy and imperialism stand to lose, it does matter and treaties, however moth-eaten and harmful to the people they might be, have to be preserved. It is a monstrous imposition to be asked to put up with these treaties of a century and a quarter ago, in the making of which the people had no voice or say. It is fantastic to expect the people keep on their chains of slavery, imposed upon them by force an fraud, and to submit to a system which crushes the life-blood out of them. We recognise no such treaties and we shall in no event accept them. The only final authority and paramount power that we recognise is the will of the people, and the only thing that counts ultimately is the good of the people.

65. Jammu and Kashmir constitution act 1939.

Preamble. Whereas
It is expedient to consolidate and amend the law relating to the Government of Jammu and Kashmir : we are hereby pleased to enact as follows:

1. This Act may be cited as the Jammu and Kashmir Constitution Act of 1966.
2. This Act shall extend to the whole of the Jammu and Kashmir State and shall come into force at once.
3. In this Act unless there is anyting repugnant in the subject or context ;
   (a) "Council" means the Council of Ministers of Jammu and Kashmir referred to in section 7;
   (b) "Gazettee', means the Jammu and Kashmir Government Gazette;
   (c) "His Highness" means 'His Highness the Maharaja Bahadur' of Jammu and Kashmir;
   (d) "Official" and "non-official" mean respectively a person who is and a person who is not in the Civil or Military Service of the State, provided that rules under this Act may provide for the holders of such offices or any of them as may be specified in the rules not being treated for purposes of this Act as officials;
   (e) "Rules" mean the rules made under this Act ; and
   (f) "State" means the State of Jammu and Kashmir.

4. The territories for the time being vested in His Highness are governed by and in the name of His Highness, and all rights, authority and jurisdiction which appertain or are incidental to the government of such territories are exercisable by His Highness, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Highness.
5. Notwithstanding anything contained in this or any other Act all powers, legislative, executive and judicial, in relation to the State and its government are hereby declared to be and to have always been inherent in and

possessed and retained by His Highness and nothing contained in this or any other Act shall affect or be deemed to have affected the right and prerogative of His Highness to make laws, and issue proclamations, orders and ordinances by virtue of his inherent authority.

6. **The Executive**
Subject always to the provisions of sections 4 and 5 and subject also to such rules of business and allocation of portfolios and such other directions as to consultations with or reports to and confirmation by His Highness on special matters as His Highness may give from time to time by general or special orders in that behalf, the superintendence, direction and control of the civil administration and government of the State shall be vested in the Council.

7. The Council shall consist of rhe Prime Minister for the time being and such other Ministers of State as His Highness may appoint by Royal Warrant of appointment. The Prime Minister and the other Minister shall be responsible to His Highness and shall hold office during the pleasure of His Highness. The Prime Minister shall be the President of the Council.

8. Every person appointed to be a member of the Council shall before entering on the duties of his office make and subscribe before His Highness or any other officer authorised by His Highness in this behalf on oath of allegiance in the form set out in schedule I.

9. The Prime Minister may with the previous sanction of His Highness make rules for the more convenient transaction of the business of the Council.

10. (1) His Highness may appoint a person qualified to be appointed a Judge of High Court to be Advocate General for the State subject to such rules as may be made by the Council in this behalf;

(2) It shall be the duty of the Advocate General to give advice on such legal matters and to perform such other duties of a legal character as may

from time to time be referred or assigned to him by the Council;

(3) The Advocate General shall be appointed for such period and on such salary or other remuneration and on such terms and conditions of service as His Highness may fix.

11. Orders and other instruments made and executed in the name of His Highness or of the Council shall be authenticated in such manner as may be specified in rules to be made by His Highness and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by His Highness or the Council as the case may be.

12. The Council may make rules not inconsistent with this Act for the following matters :

(a) the term of office of the nominated members of the Praja Sabha and the matter of filling casual vacancies among them;

(b) the conditions under which and the manner in which persons may be nominated as members of the Praja Sabha;

(c) the qualifications of electors, the constitution of constituencies and their territorial extent, the method of election of the members of the Praja Sabha and any matters incidental or ancillary thereto;

(d) the qualifications for being or being chosed as members of the Praja Sabha;

(e) the final decision of doubts and disputes as to the validity of an election;

(f) the prevention of corrupt practices at election;

(g) the manner in which rules should be carried into effect;

(h) regulating the course of business and the preservations of order in the Praja Sabha;

(i) prohibiting or regulating the asking of questions on

and the discussion of any subject specified in the rules;

(j) fixing the dates and the procedure for the presentation and discussion of the annual financial statement;

(k) fixing the halting and travelling allowances of members of the Praja Sabha for attending meetings of the Praja Sabha or of the Committees hereof.

(l) the duties of Praja Sabha Under-Secretaries;

(m) the duties of the Advocate General; and

(n) generally for carrying out the provisions of this Act.

THE LEGISLATURE

13. Subject to the provisions of this Act, the Legislature of the State shall consist of His Highness and a chamber to be known as the Praja Sabha.

14. (1) The Praja Sabha shall consist of the President and seventy five other members.

(2) The members of the Council shall be ex-officio members of the Praja Sabha.

(3) Of the remaining members, forty shall be elected and the rest nominated by His Highness.

(4) Thirty three of the elected members shall represent the communities and the general constituencies shown in schedule II and seven shall represent the special constituencies shown in schedule III.

(5) Of the nominated members referred to in subsection.

(a) fourteen shall represent the areas and communities shown in Schedule IV, and

(b) not more than eight shall be officials.

(6) Rules may be made under clause (c) of section 12 altering the constituencies and their territorial extent as shown in schedule IV but such rules

shall not have effect unless sanctioned by His Highness.

(7) His Highness may for the purpose of any Bill introduced or proposed to be introduced in the Praja Sabha nominate not more than two persons having special knowledge or experience of the subject matter of tha Bill, and these persons shall, in relation to the Bill, have, for the period for which they are nominated all the rights of members of the Praja Sabha, and shall be in addition to the members above referred to.

15. (1) Every Praja Sabha shall continue for three years from its first meeting;
Provided that His Highness may:

(a) at any time dissolve that Praja Sabha before the expiry of its term; or
(b) extend the term of the Praja Sabha if in special circumstances he so thinks fit.

(2) His Highness shall appoint a date not more than six months after the date of expiry of the term of the Praja Sabha or of its dissolution for its next session.

(3) (a) there shall be every year at least one session of the Praja Sabha at Jammu and another at Srinagar;
(b) subject to the provisions of this section, His Highness may from time to time.

(i) summon the Praja Sabha at such time and place as he thinks fit; or
(ii) prorogue the Praja Sabha; or
(iii) dissolve the Praja Sabha.

16. Communication by His Highness to the Praja Sabha may be made

(a) in person; or
(b) by message sent through the Prime Minister or any other Minister; or

(c) by message sent through the President or any other person presiding under the provisions of section 20.

17. Communications by the Praja Sabha to His Highness shall be made by formal address submitted through the President after motion made and carried in the Praja Sabha.

18. The Advocate General shall have the right to speak in the Praja Sabha and to take part in its proceedings and in the Proceedings of any of its committees but shall not, merely by virtue of this section, have a right to vote.

19. The President of the Praja Sabha shall be appointed by His Highness for such term as he may fix and he may remove the President from office and fill casual vacancies in that office.

20. (1) The Praja Sabha shall choose one of its members to be the Deputy President thereof and so often as the office of the Deputy President becomes vacant the Praja Sabha shall choose another member to the Deputy President.

(2) The Deputy President shall perform such duties of the President as may be assigned to him by the President with the approval of the Council and shall, during the absence of the President from any sitting of the Praja Sabha, act as President.

(3) During the temporary absence of the President and the Deputy President from a meeting of the Praja Sabha such person shall act as President as His Highness may by general or special order in that behalf direct.

21. A member holding the office of Deputy President shall vacate his office if he ceases to be a member of the Praja Sabha, may, at any time, resign his office by writing under his hand addressed to the Prime Minister, and may be removed from his office by a resolution of the Praja Sabha passed by a majority of the members then on the roll of the Praja Sabha.

22. His Highness may appoint from among the non-official

members of the Praja Sabha as many under-Secretaries and for such period not exceeding the life of the Praja Sabha as he may think fit. An under- Secretary shall be attached to one or more ministers and will be assigned such duties in relation to the business coming before the Praja Sabha as may be prescribed by rules in this behalf.

23. Subject to the provisions of this Act, the Praja Sabha may make laws for whole State or any part thereof, and for the subjects of His Highness wherever they may be.

24. It shall not be lawful for the Praja Sabha to consider or deal with any matter or enact any law relating to or affecting:

(a) His Highness or any member of the Royal Family or the management of the Royal house-hold;
(b) relations, treaties, convention or agreements between the State and His Majesty the King Emperor of India or the Government of India or with Foreign powers or the Government of any State in India now subsisting or in force or hereafter to be established or made;
(c) matters of frontier policy including those relating to Ladakh and Gilgit;
(d) Such matters relating to the Jagirs of Poonch and Chenani as His Highness may specify;
(e) rights specifically granted to Illaqadars or Jagirdars by their sanads;
(f) the organization, discipline and control of the State Forces;
(g) thc departments declared by Highness from time to time as Hazure departments;
(h) the Dharmarth Trust;
(i) the provisions of this Act and the rules made thereunder and their repeal or modification; and
(j) such other matters as may be specified by His Highness from time to time.

25. (1) All questions at any sitting of the Praja Sabha

shall be determined by a majority of votes of the members present and voting, other than the President or person acting as such:
Provided that, in the case of an equality of votes, the President or person acting as such shall exercise a casting vote.

(2) The Praja Sabha shall have power to act notwithstanding any vacancy in the membership thereof and any proceedings in the Praja Sabha shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of the Praja Sabha less than one-fifth of the total number of members are present, it shall be the duty of the President or persons acting as such either to adjourn the Praja Sabha or to suspend the meeting until at least one-fifth of the members are present.

PROVISIONS AS TO MEMBERS OF THE PRAJA SABHA

26. Every member of the Praja Sabha, other than an ex-officio member, shall, before taking his seat, make and subscribe at a meeting of the Praja Sabha before the President or such person as may be authorised by His Highness in this behalf, an oath or affirmation in the form set out in Schedule 1.

27. (1) If a member of the Praja Sabha,

(a) becomes subject to any of the disqualifications mentioned in sub-section (1) of the next succeeding section,
or

(b) by writing under his hand addressed to the Prime Minister resigns his seat,
his seat shall thereupon become vacant.

(2) If for two consecutive sessions of the Praja Sabha a member is without the permission of the Presi-

dent absent from all meetings thereof, the President may declare his seat vacant.

28. (1) A person shall be disqualified for being chosen as or for being a member of the Praja Sabha,

(a) if he is an official;
(provided that this shall not apply to the ex-officio members or to the officials nominated under section 14, or to the President or to the Deputy President, or to the Under Secretaries appointed under Section 2)

(b) if he is under 25 years of age;

(c) if he is of unsound mind and stands so declared by a competent Court:

(d) if he is an undischarged insolvent or being a discharged insolvent has not obtained from a competent Court a certificate that his insolency was caused by misfortune without any misconduct on his part;

(e) if he is a person against whom a conviction by a Criminal Court for an offence punishable a with sentence of imprisonment for a term of six months or more is subsisting or an order binding him to be of good behaviour has been passed or an order of internment or externment passed by a Magistrate or the Council or His Highness is in force, unless a period of five years or such less period as His Highness may allow in any particular case has elapsed since release or the expiry of the period specified in the order ;

(f) if he hes been convicted or has in proceedings for questioning the validity or regularity of an election, been found guilty of any offence or corrupt or illegal practice relating to elections, which has been declared by any law to be an offence or has been declared by any rule or order of the Council to be a practice entailing disqualification for membership of the Praja Sabha, unless a period of three years has expired from the date of such conviction or finding;

(g) if, having been elected a member of the Praja Sabha, he has failed to lodge a return of election expenses within the time and in the manner required by the rules under this Act, unless a period of three years has expired from the date by which the return ought to have been lodged or His Highness has removed the disqualification,

(2) A person shall not be capable of being chosen a member of the Praja Sabha while he is serving a sentence of imprisonment for a criminal offence, or is under dentention for failure to furnish security for keeping the peace or for good behaviour.

29. Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Praja Sabha there shall be freedom of speech in the Praja Sabha and no member of the Praja Sabha shall be liable to any proceeding in any Court in respect of anything said or any vote given by him in the Praja Sabha or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of the Praja Sabha of any report, paper, votes or proceedings.

30. The President, the Deputy President and the Under Secretaries of the Praja Sabha shall receive such honoraria as may be determined by His Highness. The members of the Praja Sabha shall be entitled to receive such halting and travelling allowances as may be fixed by rules in this behalf.

LEGISLATIVE PROCEDURE

31. (1) Where a Bill has been passed by the Praja Sabha, the Prime Minister may, instead of presenting it for the assent of His Highness, return it to the Praja Sabha for reconsideration in whole or in part, together with any amendments which he may recommend.

(2) Where a Bill has been passed by the Praja Sabha and has not been returned to it by the Prime Minister for reconsideration it shall be submitted for the assent of His Higness, who may declare either that the assent thereto, or withholds his anssent therefrom.

(3) A Bill which is assented to under the last preceding sub-section shall be published in the Gazette in English and shall then become an Act and have the force of Law.

(4) In all the Regulations in force in the State on the date on which this Act comes into force and in the rules orders, proclamations and notifications issued under such Regulations, the word 'Act' shall, unless the context otherwise, requires, be substituted for the word 'Regulation'.

32. Subject to such restrictions and conditions as are imposed by this Act or may be imposed by rules or standing orders, any member may

(a) ask questions; and

(b) move resolutions:

provided that no question shall be asked and no resolution shall be moved which affects the religious rights, usages, endowments or personal law of any community and is not asked or moved by a member of that community.

PROCEDURE GENERALLY

33. The business of the Praja Sabha shall be transacted in Urdu but any member may address the Praja Sabha in English.

Provided that the text of all Bills and amendments there to moved in, and of all Acts passed by, the Praja Sabha, which shall be treated as authoritative, shall be in English.

34. Where the Praja Sabha refuses leave to introduce, or fails to pass in a form recommended by the Council,

any Bill, His Higness may declare that the proposed legislation is essential for the good government, safety or tranquillity of the State and such Bill shall, on such declaration, become an Act as if it had been passed by the Praja Sabha and assented to by His Highness.

35. If the Prime Minister at any time certifies that the discussion of a Bill introduced or proposed to be introduced in the Praja Sabha or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill or of any resolution or of an amendment there to would affect, the safety or tranquillity of the State or any part thereof, he may direct that no proceedings. or no further proceedings, shall be taken in relation to the Bill, clause or amendment, or resolution or its amendment, and effect shall be given to the direction.

36. It shall not be lawful, without the previous sanction of His Highness, to introduce, consider or pass any Bill affecting the religious rights, usages, endownments or personal law of any community, and no such Bill shall be deemed to be passed by the Praja Sabha unless two third of the members of the Praja Sabha from the community affected are present at the meeting of the Praja Sabha and vote in its favour.

37. No discussion shall be allowed in the Praja Sabha with regard to the conduct of any member of His Highness Board of Judicial Advisers or of any Judge of the High Court in the discharge of his duties.

38. Notwithstanding anything contained tn this Act, the Council may, in case of emergency or where immediate legislation is required in any matter affeeting the peace and good government of the State, submit to His Highness an Ordinance and such Ordinance on being assented to His Highness shall have the force of law for a period not exceeding six months from the date of its promulgation.

39. It shall not be lawful for the Praja Sabha to repeal or alter any ordinance passed under section.

40. Standing orders may be made and altered by the Praja Sabha providing for the conduct of business and

the procedure to be followed in the Praja Sabha. Any standing order which is repugnant to the provisions of this Act or to any rules made thereunder shall to the extent of that repugnancy but not otherwise, be void.

PROCEDURE IN FINANCIAL MATTERS

41. The Council shall in respect of every financial year cause to be laid before the Praja Sabha a statement of the estimated receipts and expenditure of the State for the year:

Provided that the estimated receipts and expenditure relating to the Jagirs of Poonch and Chenani shall be shown separately in the statement.

42. The estimates of expenditure embodied in the annual financial statement shall show separately :

(a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the State; and
(b) the sums required to meet other expenditure proposed to be met from the revenues of the State.

43. The following expenditure shall be the expenditure charged on the revenues of the State:

(a) expenditure on matters reserved from the cognizance of the Praja Sabha under section 24;
(b) contributions payable to other Governments;
(c) expenditure obligatory under any law;
(d) interest on loans and sinking fund charges;
(e) expenditure which may be classed by His Highness or the Council as political;
(f) pensions and gratuities granted by His Highness or with his sanction or under the rules sanctioned by His Highness or the Council;
(g) contributions, grants and scholarships sanctioned by His Highness;

(h) salaries of the Judges of the High Court and the members of His Highness Board of Judicial Advisers:

(i) salaries of such other officers as His Highness may specify from time to time; and

(j) such other expenditure as His Highness may specify from time to time.

44. Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the State shall be decided by the Prime Minister and such decision shall be final.

45. (1) So much of the estimates of expenditure as relates to the expenditure charged on the revenues of the State shall not be submitted to the vote of the Praja Sabha.

(2) So much of the said estimates as relates to the other expenditure shall be submitted to the Praja Sabha in the form of demands for grants. The Praja Sabha shall have power to assent or to refuse to assent to any demand or to assent to a demand subject to a reduction of the amount specified therein.

provided that :

(a) the Council shall have power, in relation to any such demand, to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein specified, if the Council considers that the expenditure provided for by the demand is necessary for the carrying on of any department or for the discharge of the Council's responsibility for its administration; and

(b) His Highness may in cases of emergency authorise such expenditure as may in his opinion be necessary for the safety or tranquillity of the State or any part thereof or for the carrying on of any department.

(3) No demand for a grant shall be made except on the recommendation of the Council.

46. If in respect of any financial year further expenditure from the revenues of the State becomes necessary over and above the expenditure authorised from that year, the Council shall have the power to authorise that expenditure. A statement of the expenditure so authorised shall be presented to the Praja Sabha along with the financial statement for the following year.

47. (1) A Bill or amendment making provision:

(a) for imposing, increasing or decreasing any tax, or

(b) for regulating the borrowing of money or the giving of any guarantee by the Council or for amending the law with respect to any financial obligation undertaken by the Council, or

(c) for declaring any enpenditure to be expenditure charged on the revenues of the State, shall not be introduced or moved except with the previous sanction of the Prime Minister.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the State shall not be paseed by the Praja Sabha unless the Council has recommended to the consideration of the Bill.

THE JUDICATURE : THE HIGHCOURT

48. (a) the High Court referred to in this Act is the High Court established in the State by Order No. 1 of 1985 and styled as the High Court of Judicature, Jammu and Kashmir State; and

(b) the High Court shall consist of a Chief Justice

and two or more other Judges, as His Highness may from time to time think fit to appoint.

49. Every Judge of the High Court shall be appointed by His Highness and shall hold office until he attains the age of fifty five years, unless His Highness otherwise directs :

Provided that:

(a) a Judge may by resignation under his hand addressed to the Prime Minister resign his office;
(b) a Judge may be removed from his office by order of His Highness on the ground of misbehaviour, or of infirmity of mind or body.

50. (1) The Chief Justice shall have rank and precedence before the other Judges.
(2) All the other Judges shall have rank and precedence according to the seniority of their appointments.

51. A person shall not be qualified for appointment as a Judge of the High Court unless he;

(a) is a barrister of England or Ireland or member of the Faculty of Advocates in Scotland of not less than ten years standing; or
(b) has for at least three years held a judicial office in the State not inferior to that of a District Judge; or
(c) has for at least five years held a judicial office in the State or in British India, not inferior to that of a subordinate Judge, or a Judge of a Small Causes Court; or
(d) is an Advocate of the High Court or of any High Court in British India, and is a barrister of England or Ireland or a member of the faculty of Advocates in Scotland or a law graduate of any recognised University in India who has been practising as an Advocate of

the High Court or of any High Court in Brtish India for a period of at least ten years.

52. The Chief Justice and the other Judges of the High Court shall receive such salaries and allowances as His Highness may from time to time fix in this behalf.

53. Every person appointed to be a Judge of the High Court shall before he enters upon his office make and subscribe His Highness or some person appointed by him an oath according to form set out in that behalf in schedule 1 of this Act.

54. The High Court of Judicature shall have and use as occasion may require a seal bearing and advice impression of the Jammu and Kashmir Coat of Arms with an exergue or label surrounding the same, with the following inscription, "The seal of the High Court of Judicature, Jammu and Kashmir". The said seal shall be delivered to and kept in the custody of the Chief Justice or of an officer the Court from time to time nominated by the Chief Justice.

55. All writs, summonses, precepts, rules order and other mandatory processes to be used by the High Court shall run and be in the name and style of His Highness and shall be sealed with the seal of the High Court.

56. (1) The High Court is a Court of record.

(2) The High Court shall have jurisdiction to hear and determine any original civil suit or other proceeding of which the value is not less than rupees ten thousand and every such suit or proceeding shall be instituted in the High Court.

(3) The High Court shall have jurisdiction to entertain and dispose of such appeals, revisions and other cases-civil, criminal or revenue-as it may be empowered to do under any enactment in force in the State.

57. The usual places of sittings of the High Court shall be Jammu and Kashmir (Srinagar) and His Highness may by order direct for what period the High Court sit at each such place.

58. Whenever it appears to the Chief Justice convenient that the jurisdiction and power vested in the High Court by this Act or by any other enactment for the time being in force should be exercised in any place within the jurisdiction of any court subject to the superintendence of the High Court, other than the usual places of sitting of the High Court, or at several such places by way of circuit, one or more Judges of the High Court shall with the previous sanction of His Highness hold Court at such place or plaees.

59. Except as provided by any enactment of the time being in force, all original proceedings and suits shall be heard and decided by a single Judge of the High Court.

60. (1) Except as otherwise provided by any enactment for the time being in force and subject to any rules made in this behalf, the Jurisdiction of the High Court of Judicature may be exercised by a single Judge of the Court or by a bench of two or more Judges of the Court.

(2) Except as otherwise provided by any enactment for the time being in force, an appeal from any original decree or from any order against which an appeal is permitted by any law for the time being in force passed or made by a single Judge of the High Court shall lie to a bench consisting of two other Judges of the High Court.

(3) Unless such appeal is prohibited by any enactment for the time being in force an appeal from an appellate decree made by a single Judge of the High Court shall lie to a bench consisting of two other Judges of the High Court, where the Judge who passed decree declares that the case is a fit one for appeal.

61. The Chief Justice shall, subject to the provisions of this Act, determine which Judge in each case will sit alone and which Judge of the Court will constitute a bench.

62. (1) When there is a difference of opinion among the Judges composing any bench of the High Court, the decision shall be in accordance with the opinion of the majority of the Judges.

(2) If there is no such majority, then

(a) if the bench is a full bench, the decision shall be in accordance with the decision of the Senior Judge, and

(b) in other cases the bench before which the difference has arisen shall either refer the question or the whole case for decision to a full bench.

63. (1) Any single Judge, and any bench of two Judges of the High Court, not being a full bench may, in any case, refer for the decision of a full bench any question of law, or custom having the force of law, or of the construction of any document, or of the admissibily or any evidence, arising before such single Judge or bench and shall dispose of the case in accordance with the decision of the full bench.

(2) Any Judge of the High Court may, if he thinks fit, refer any appeal or application coming before him for hearing as a single Judge to a bench of two Judges for decision.

64. (1) Subject to such rules and regulations as His Highness may make, the High Court shall have superintendence and control over all Courts for the time being subject to its appellate or revisional jurisdiction, and all such Courts shall be subordinate to the High Court.

(2) The Chief Justice, or a Judge of the High Court authorised by him in this behalf, shall from time to time visit and inspect the proceedings of the Courts subordinate to the High Court and shall give such directions in matter not provided for by law as may be necessary to secure the due administration of justice.

65. (1) The High Court may, subject to the sanction of the Council and on such terms as to salary, allowances, promotion, leave, suspension and dismissal, as may be sanctioned by the Council, appoint a Registrar and a Deputy Registrar.

(2) The High Court may delegate to the Registrar or the Deputy Registrar or both such judicial, quasi-judicial or administrative powers as it may deem fit.

66. The High Court shall comply with such requisitions, as may, from time to time, be made under the commands of His Highness for records, returns and statements in such form or manner as His Highness may require;

67. (1) The High Court may, consistently with the laws for the time being in force, make rules:

(a) to regulate the practice of the Court;

(b) to regulate the practice of the Courts subordinate thereto,

(c) to provide for the forms to be used in the High Court and the Courts subordinate thereto for such proceedings, books, entries, statistics, and accounts as it thinks fit;

(d) to provide for the inspection of Courts subordinate thereto and the supervision of the work thereof;

(e) to regulate all such matters as it may think fit with a view to promote the efficiency of the judicial and ministerial officers of the High Court and of the Courts subordinate thereto, and the maintaining of proper discipline among those officers; and

(f) prescribing the qualifications for and admission of persons to the Advocates, Vakils and Attorneys-at-law of the High Court and providing for the removal or suspension from practice, on reasonable cause, of the said Advocates, Vakils and Attorneys-at-law.

(2) Such rules shall be made with the approval of a majority of the Judges of the Court and the sanction of the Council.

68. The High Court shall have the power to approve, admit and enrol such and so many Advocates, Vakils, and Attorneys-at-law, as it may deem fit.

69. The High Court shall have the power to punish with fine not exceeding rupees one thousand or with simple imprisonment for a period not exceeding six months or with both any person who is guilty of contempt in relation to itself or to any Court subordinate to it;

Provided that the High Court shall not take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it when such contempt is an offence punishable under the Ranbir Penal Code.

70. Notwithstanding anything provided in any enactment to the contrary, no Judge of the High Court sitting in a full bench thereof shall, by reason of his having decided or otherwise dealt with any case, be barred from hearing and deciding the case.

HIS HIGHNESS' BOARD OF JUDICIAL ADVISERS

71. (1) His Highness may appoint a Board of Judicial Advisers to advise him for the disposal of such civil and criminal appeals as may, under the law for the time being in force, lie to His Highness from the decisions of the High Court, and on such other matters as His Highness may choose to refer to such Board for advice.

(2) Such Board shall be composed of as many members as His Highness may from time to time determine and such members shall be appointed by His Highness for such period and no such terms as to salary and other conditions of service as His Highness may consider proper.

(3) Every person appointed to be a member of the Board shall, before he enters upon his office, make

and subscribe before His Highness or some person appointed by him an oath according to the form set out in that behalf in Schedule 1 of this Act.

(4) His Highness may appoint any person as an ex-officio member of the Board of Judicial Advisers to discharge the functions of the Board during the period such Board is not in session, provided that such ex-officio member shall not sit on the bench of the Board for hearing any appeal or other matter as is referred to such Board for advice.

(5) His Highness may make rules regulating the procedure regarding the filing of appeals to His Highness, the place or places and the period of sittings of the Board of Judicial Advisers and the hearing as such appeals and other matter as are referred to the Board for advice.

(6) The Board may, from time to time with the sanction of His Highness, add to, alter or amend the rules of procedure in such manners as they think fit.

ROYAL PREROGATIVE

72. Nothing herein contained and nothing contained in any other enactment for the time being in force, shall be deemed to affect in any way or derogate from the inherent power and preprogative of His Highness or to affect in any way his prerogative of mercy and pardon, or his power of remitting, commuting or reducing sentences conditionally or otherwise.

GENERAL CONSTITUENCIES

S. No.	Name of Constituency	Extent of Constituency	No. of Members.
(1)	(2)	(3)	(4)
(A) MUSLIM			
1.	Jammu City Muslim	The City of Jammu,	1
2.	Jammu Rural Muslim	The Wazarat of Jammu excluding Jammu City	1
3.	Udhampur Muslim	The Wazarat of Udhampur	1
4.	Reasi Muslim	The Wazarat of Reasi	1
5.	Kathua Muslim	The Wazarat of Kathua	1
6.	Mirpur-Kotli	The Tehsils of Mirpur and Kotli.	1
7.	Bhimber	The Tehsil of Bhimber	1
8.	Haveli-Mandhar	The Tehsils of Haveli and Mendhar, Jagir Poonch.	1
9.	Bagh Sudhnuti	The Tehsils of Bagh and Sudhnuti, Jagir Poonch	1
10.	Amirakadal	Ward No. 1 Srinagar City	1
11.	Rainawari-Mahrajganj.	Ward Nos. 5,6 and 8 Srinagar City.	1
12.	FatehKadal-Tankipura	Ward Nos. 2 and 3 Srinagar City.	1
13.	Shah Hamdan	Ward No. 4 Srinagar City	1
14.	Tashwan	Ward No. 7 Srinagar City	1
15.	Awantipur	The Tehsils of Srinagar excluding Srinagar City, and Pulwama.	1
16.	Anantnag	The Tehsil of Anantnag	1
17.	Kulgam	The Tehsil of Kulgam	1

18.	Handwara	Uttarmachipura Tehsil	1
19.	Badgam	Sri Pratapsinghpura Tehsil	1
20.	Baramulla	The Tehsil of Baramulla	1
21.	Muzaffarabad	The Wazarat of Muzaffarabad	1

(B) HINDU

22.	Jammu City North	Ward Nos. 1, 2 and 3 Jammu City	1
23.	Jammu City South	Ward Nos. 4,5,6 and 7 Jammu City	1
24.	Jammu Rural	The Wazarat of Jammu, excluding Jammu City	1
25.	Udhampur Hindu	The Wazarat of Udhampur	1 1
26.	Reasi Hindu	The Wazarat of Reasi	1
27.	Kathua Hindu	The Wazarat of Kathua	1
28.	Mirpur Hindu	The Wazarat of Mirpur	1
29.	Srinagar South	Ward Nos. 1,2 and 3 Srinagar City	1
30.	Srinagar North	Wards Nos. 4,5,6,7 and 8 Srinagar City	1
31.	Kashmir Hindu	The Wazarats of Kashmir North, Kashmir South (excluding Srinagar City and Muzaffarabad)	1 1

(C) SIKH

32.	Mirpur-Poonch Sikh	The Wazarat of Mirpur and Jagir of Poonch	1
33.	West Kashmir Sikh	The Wazarat of Muzaffarabad and Tehsil Uttarmachipura and Baramulla	1

SPECIAL CONSTITUENCIES

S. No.	Constituency	Number of Members
	(A) TAZIMI SARDARS	
1.	Jammu Province including Chenani and Poonch Jagirs.	1
2.	Kashmir Province including Frontier Districts.	1
	(B) JAGIRDARS, MUAFIDARS AND MUKKARARIDARS	
	Holding a Jagir, Muafi or Mukkarari from the State on not less than Rs. 500 per annum.	
3.	Jammu Province including Chenani and Poonch Jagirs.	1
4.	Kashmir Province including Frontier Districts.	1
	(C) LANDHOLDERS	
	Owing land assed to Land Revenue of not less than Rs.250 per annum.	
5.	Jammu Province including Chenani and Poonch Jagirs.	1
6.	Kashmir Province including Frontier Districts.	1
	(D) PENSIONERS	
	Receiving Rs. 100 or more as persion per month.	
7.	Jammu and Kashmir State.	1.

AREAS FOR WHICH MEMBERS SHALL BE NOMINATED

S. No.	Areas	Community	Number of Members
(1)	(2)	(3)	(4)
1.	Ladakh Wazarat	Buddhist	2
2.	Skardu Tehsil	Muslim	1
3.	Kargil Tehsil	Muslim	1
4.	Gilgit Wazarat	Muslim	1
5.	North Kashmir Wazarat	Muslim	1
6.	South Kashmir Wazarat	Muslim	1
7.	Muzaffarabad Wazarat	Muslim	1
8.	Jammu Wazarat	Hindu	1
9.	Udhampur Wazarat	Hindu	1
10.	Srinagar City	Hindu other than Kashmari Pandit	1
11.	Poonch Jagir	Hindu	1
12.	Chenani Jagir	Hindu	1
13.	Wazarat Jammu, Udhampur, Reasi, Kathua, Sikh Kashmir South and Sri Pratap-singhpura	Sikh	1

66. Jammu and Kashmir Praja Sabha Rules of Business and Procedure, 1939.

(Extract)

CHAPTER II

DURATION AND SESSION OF THE PRAJASABHA

6. Summoning of Praja Sabha and dates of meeting:

(i) The Secretary will issue a notice to each member of the time and place at which the Praja Sabha is summoned by His Highness and such notice shall be issued sixty clear days before the date for which the Praja Sabha is summoned. (ii) After the commencement of a session the Praja Sabha shall sit on such days as the Prime Minister, having regard to the State of business, may from time to time direct.

7. Termination of the Session....(1) A session of the Praja Sabha is terminated by progation by His Highness. (2) On the termination of a session

(a) all pending notices shall lapse so that a member will be required to send new notices in regard to business for the next session;

(b) any bill which has been introduced, and any motion for the amendment of the standing orders, which has received the leave of the Praja Sabha, shall be carried over to the pending list of business of the next session:
Provided
that if the member-in-charge of a bill makes no motion in regard to the same during the next two sessions, the bill shall lapse.

8. Effect of dissolution...on the dissolution of the Praja Sabha all questions and all bills other than Government bills shall lapse excepting as may be provided forby standing orders made in this behalf.

CHAPTER III

THE PRESIDENT, THE DEPUTY PRESIDENT AND THE SECRETARY

9. Election of the Deputy President...the Praja Sabha shall choose a Deputy President in the following manner:

(1) The President shall fix a date for electon of the Deputy President.

(2) At any time before noon on the day preceding the date so fixed, any member may nominate another member for election by delivering to the Secretary a nomination paper containing the name of the member nominated and signed by himself as proposer and by a third member as seconder and also by the member nominated in token of his consent to serve as Deputy President, if elected.

(3) On the date fixed for election the President shall read out to the Praja Sabha the names of the candidates nominated together with those of their proposers and seconders; and if only one person has been nominated for election, the President shall declare that person to be duly elected. If more than one person has been nominated, the Praja Sabha shall then proceed to elect a Deputy President by ballot.

(4) The ballot shall be taken in such manner as the President may determine and the candidate, who obtains more votes than those obtained by the other candidate, or than the aggregate of the votes obtained by the other candidates, as the case may be, shall be declared duly elected.

(5) Where more than two candidates have been nominated and at the first ballot no candidate obtain more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election, and fresh ballot shall take place, the candidate obtaining the smallest number of votes at each ballot being excluded from the election, until one candidate obtains more votes than the remaining candidates, or

than the aggregate votes of the remaining candidates, as the case may be.

(6) Where at any ballot any of three or more candidates obtain an equal number of votes the candidate to be excluded from the election under clause (5) shall be determined by drawing of lots.

(7) Where any two candidates have been nominated and they obtain equal votes, or where the two candidates remaining after the exclusion of others under clause (5) obtain equal votes, the President shall give his casting vote and the candidate in whose favour such casting vote is given shall be declared duly elected.

CHAPTER VIII
LEGISLATION
A. INTRODUCTION OF BILLS

62. Publication of bills before introduction...The Council may order the publication of any bill together with the statement of objects and reasons in the gazette although no motion has been made for leave to introduce the bill. In that case it shall not be necessary to move for leave to introduce the bill and if the bill is afterwards introduced, it shall not be necessary to publish it again.

63. Notice of a motion for leave to introduce bill....(1) Any member, other than a member acting on behalf of the Council, desiring to move for leave to introduce a bill, shall give notice of his intention to do so and shall together with the notice, submit a copy of the bill and a full statement of objects and reasons. ...(2) If the bill is a bill which under the Act requires sanction, the member shall annex to the notice a copy of such sanction, and the notice shall not be valid until this requirement is complied with.

64. Effect of certification by Prime Minister....If the Prime Minister certifies that a bill or any clause of a bill or any amendment to a bill affects the safety and tranuility of the State, or any part of it, and directs that no proceedings or no further proceedings shall be taken thereon, all notices of motions in connection with the subject matter of the

certificate shall lapse and if any such motion has not already been set down in the list of business, it shall not be so set down. If any such motion has been set down on the list of business, the President shall, when the motion is reached, inform the Praja Sabha, and the Praja Sabhashall forthwell without debate proceed to the next item of business.

65. Motion for leave to introduce a bill....(1) Except when the publication of a bill has been made as provided in rule 62, any member desiring to introduce a bill in the Praja Sabha shall make a motion for leave to introduce the bill and if the motion is not opposed by any other member, the motion shall be deemed to havebeen carried...(2) The precedence of motions for leave to introduce nonofficial bills shall be determined by ballot to be held in accordance with the rules contained in Schedule I.

66. Procedure when motion for leave to introduce is opposed....If a motion for leave to introduce is opposed, the President, after permitting, if he thinks fit, a b rief explanatory statement from the member who moves and from the member who opposes the motion, may put the question without further debate.

67. Introduction of bills....At any time after a bill has been published in the gazette under orders of the Council as provided in rule 62, or after the motion for leave to introduce has been carried, the member-in-charge of the bill may introduce it.

68. Publication of the bills after introduction....As soon as may be after a bill has been introduced, the bill, unless it has already been published, shall be published in the gazette.

69. Supply of copies to members....After a bill has been published under rule 62 or under the preceding rule, copies thereof shall be made available to the members.

70. Motions after introduction....When a bill is introduced or on some subsequent occasion the member-in-charge may make one of the following motions in regard to the bill, namely:

(a) that it be taken into consideration by the Praja Sabha either at one or at some future day to be then specified; or

(b) that it be referred to a Selection Committee; or
(c) that it be circulated for the purpose of eliciting opinion thereon.

Provided that no such motion shall a be made until after copies of ths bill have been made available for the use of members, and that any member may object to any such motion being made unless copies of the bill have been so made available to him for three days before the day on which the motion is made, and such objection shall prevail, unless the President in the exercise of his power to suspend this rule, allows the motion to be made.

71. Persons by whom motions in respect of bills may be made....No motion that a bill be taken into consideration or be passed shall be made by any member other than the member-in-charge of the bill, and no motion that a bill be referred to a Select Committee, or circulated, or re-circulated for the purpose of eliciting opinion thereon, shall be made by any member other than the member-in-charge, except by way of amendment to a motion made by the member-in-charge.

72. Discussion of principles of bills....(1) On the day on which any of the motions referred to in rule 70 is made, or on any subsequent day to which the discussion thereof is postponed, the principle of the bill and its general provisions may be discussed, but the details of the bill must not be discussed fu rther than is necessary to explain its principle...(2) At this stape no amendments to the bill may be moved, but;

(a) if the member-in-charge moves that the bill be taken into consideration, any member may move as an amendment that the bill be referred to a Select Committee or be circulated for the purpose of eliciting opinion thereon by a date to be specified in the motion; or
(b) if the member-in-charge moves that the bill be referred to a Select Committee, any member may

move as an amendment that the bill be circulated for the purpose of eliciting opinion thereon by a day to be specified in the motion

(3) When a motion that the bill be circulated for eliciting opinion is moved as an amendment and is carried no motion that it be referred to a Select Committee shall be moved or put to vote; and
When a motion that the bill be referred to a Select Committee is made as an amendment and is carried, no motion that it be circulated for eliciting opinion shall be moved or put to vote.

(4) Where a motion that a bill be circulated for the purpose of eliciting opinion thereon is carried, and the bill is circulated in accordance which that direction and opinions are received thereon, the member-in-charge, if he wishes to proceed with his bill thereafter, must move that the bill be referred to a Select Committee, unless the President in the exercise of his power to suspend this rule, allows a motion to be made that the bill be taken into consideration.

73. Provision in case of failure of Praja Sabha to pass legislation.....Where a declaration has been made under section 34 of the Act in respect of a bill, any motion made in regard to such bill shall be deemed to have been withdrawn.

B. SELECT COMMITTEES

74. Constitution of Select Committees....The Minister to whose Department the bill relates and not more than eight other members, including in the case of a private bill the member who introduced the bill, shall be members of every Select Committee, provided that when any members have been nominated under subsection (7) of section 14 of the Act for the purpose of the bill, they shall be ex-officio members of the Select in Committee addition to the number above referred to.

75. Election of members....(1) The members of the Select

Committee other than the Minister and the member-incharge if any, shall be elected by the Praja Sabha when the motion that the bill be referred is made. (2) If there is no opposition to the names proposed, all the members proposed will be deemed to be duly elected. In case any member objects to the name of a particular member and desires his substitution by another member, the President shall put the question to the vote of the House and the member elected by majority of votes shall be the duly elected member.

76. Vacancy on the Select Committee... (1) In case of a vacancy occurring among the elected members of a Select Committee when the Praja Sabha is in session, the Praja Sabha may elect a member to fill the vacancy. (2) In case thevacancy occurs through death, resi- gnation, inability to attend to duty or otherwise at a time when the Praja Sabha is not sitting, and the appear matters to be urgent, the President, may appoint any member to fill such vacancy.

77. Chairman....The Minister-in-charge of the Department to which the bill relates shall be the Chairman of the Select Committee, or in his absence, any other member of the Committee whom he may nominate shall act as Chairman.

78. Quorum:

(1) No business shall be transacted at any sitting of the Select Committee unless a majority of the members of the Committee including the member-in-Charge of the bill be present.

All matters in the Select Committee shall be decided by majority of votes of the members at a meeting, and in the case of an equality of votes the Chairman shall havea second or casting vote.

(2) If at any time fixed for any meeting of the Select Committee, or if at any time during, such meeting the quorum of memebrs, fixed by this rule is not present, the Chairman of the Committee shall either suspend the meeting unless the quorum is present or adjourn the Committee to some future date.

(3) Where the Select Committee has been adjourned in

pursuance of sub-rule (2) on two successive days fixed for the meetings of the Committee, the Chairman shall report the fact to the Praja Sabha.

79. Attendance of officials....The Chairman of the Select Committee may cause any official to attend a Select Committee whose assistance he may require but such officials hall not have a vote as a member of the Committee.

80. Hearing expert evidence—The Select Committee may hear expert evidence and reparesentative of special interests affected by the measuse before them.

81. Reports of Select Committee:

(1) After publication in the gazette of a bill as required by the rules, the Select Committee to which the bill has been reterred shall make a report thereon.

(2) Such report shall be made not sooner than two months from the date of the first publication of the bill in the gazette unless the Praja Sabha orders the report to be made sooner.

(3) Reports may be either preliminary or final, and shall be authenticated by the signature of the Chairman.

(4) If the Praja Sabha has fixed a period within which the Select Committee shall submit its report upon be unable for any reason to submit its report within that period, the President, may, from time to time, extend period on the application of the member-in-charge of the bill.

(5) The report of a Select Committee shall state the date on which the bill was published in the gazette and whether in the opinion of the Committee the bill has been so altered as to require republication or not. The report shall be signed by the members and if any member desires to record a minute of dissent on any point, he must sign the majority report, stating that he does so subject to his minute of dissent which must be handed over to the Chrirman within 3 days of the date on which he signs the

report.

(6) The report of a Select, Committee together with the minutes of dissent, if any, and the amended bill where republication of the bill is considered necessary shall be published in the gazette by the Secretary of the Praja Sabha and a copy of the report shall be made available for the use of every member of the Praja Sabha.

82. President's power to order reprint. : If a Select Committee has reported that the bill in their judgement does not require republication, the President, if he considers that for the purpose of facilitating the dis- cussion of the bill in the Praja Sabha a reprint of the amendedbill is required he may direct that the bill as amended by the Select Committee be reprinted and copies of the reprinted bill be supplied to members of the Praja Sabha.

83. Presentation of the report:

(1) The report of a Select Committeeshall be presented to the Praja Sabha by the member-in-charge of the bill.

(2) In presenting the report the member-in-charge shall, if he makes any remarks, confine himself to a brief statement of facts, but there shall be no debate at this stage.

84. Procedure after presentation : (1) After the presentation of the final report of a Select Committee on a bill, the member-in-charge may move :

(a) that the bill as reported by the Select Committee be taken into consideration, provided that any member of the Praja Sabha may object to its being so taken into consideration, if a copy of the report has not been made available for his use for seven days aud such objection shall prevail, unless the President, in the exercise of his power to suspend this rule allows the report to be taken

into consideration; or

(b) that the bill as reported by the Select Committee be recommitted either :

(i) without limitation; or

(ii) with respect to particular clauses or amendments only; or

(iii) with instructions to the Select Committee to make some particular or additional provision in the bill.

(2) If the member-in-charge moves that the bill be taken into consideration, any member may move as an amendment that the bill be re-committed.

x x x x x

CHAPTER IX
RESOLUTIONS

95. Notice of resolutions...A member who proposes to move a resolution shall give to the Secretary notice in writing of his intention and shall submit together with the notice a copy of such resolution. Provided that a member shall not give notice of more than two reso-lutions per day of the days assigned for non-official resolutions.

96. Form and content of resolutions....No resolution shall be admitted unless it complies with the following conditions, namely:

(1) It shall be related to a matter of general public interest which is within the competence of the Council to deal with.

(2) It shall be in the form of a specific recommendation addressed to the Council.

(3) It shall be clearly and precisely expressed and shall

raise substantially a definite issue.

(4) It shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity.

(5) It shall not relate to any matter which is under adjudication by a court of law.

97. Admissibiltty of resolutions....The Prcsident shall decide on the admissibility of a resolution. If a resolution does not in his opinion comply with the Act or the rules, he may disallow it or may, give the member an opportunity to amend the form of a resolution to bring it into conformity with the rules. If the defect is of a purely verbal or formal character the President may himself amend the resolution and admit it. The ruling of the President as to whether any resolution complies with the rules or not shall be final.

98. Intimation to members....The Secretary shall give intimation to the members that the resolution has been admitted or disallowed or allowed as amended by the President as the case may be.

99. Priority of resolutions on the list of business....The resolutions which have not been disallowed by the President shall be entered in separate lists of each day allotted to non-officlal resolutions and the priority of resolutions for purpose of discussion shall be determined by a ballot to be held by the Secretary:

Provided that no member shall ballot for more than one resolution for one day and not more than seven resolutions shall be entered in the list of resolutions for one day.

100. Motion and withdrawal of resolutions.... (1) If any member in whose name a resolutions stands on the list of business when called on is absent the resolution shall be deemed to have been withdrawn.

(2) If a member in whose name a resolution stands in the list of bussiness is called on to move it he may with permission of the President authorise any

other member in whose name the same resolution stands also in the list of business for that day, to move it on his behalf and the member so authorised may move accordingly.

(3) When a member moves a resolution he shall commence his speech by a formal motion in the terms appearing on the list of business.

101. Duration of speeches on a resolution except with the permission of the President, shall exceed fifteen minutes in duration:

Provided that the mover of a resolution, when moving the same, and the Minister to whose department the resolution relates, or his Under-Secretary or any official member authorised by Minister to speak on his behalf when speaking for the first time, may speak for thirty minutes, or for such longer time as the President may permit.

102. The limit of discussion...The discussion of a resolution shall be strictly limited to the subject of a resolution.

103. Seconding of resolutions....As soon as a resolution has been moved, it shall be seconded by another member, and no discussion shall be permitted on a resolution which is not so seconded.

104. Amendments and their notice....After a resolution has been moved, any member may, subject to the rules and standing orders relating to resolutions, move an amendment to the resolution.

105. Notice of amendments....(1) If notice of such amendment has not been given two clear days before the day of on which the resolution is moved, any member may object to the moving of the amendment, and such objection shall prevail, unless the President, in the exercise of his power to suspend this rule allow the amendment to be moved.

(2) The Secretary shall, if time permits, cause a copy of every amendment to be made available for the use of every member.

CHAPTER X
FINANCIAL BUSINESS

111. The Annual Financial Statement....A statement of the estimated annual expenditure and revenue of the State (hereinafter referred to as the "Annual Financial Statement") shall be presented, each year, to the Praja Sabha on such day as the Prime Minister may appoint.

Note:—The estimated annual expenditure and revenues of the Jagirs of Poonch and Chenani shall be shown separately.

112. Financial Statement not to be discussed on presentation..... There shall be no discussion of the Annual Financial Statement on the day on which it is preesented to the Praja Sabha.

113. Demand for Grant....(1) A separate demand shall ordinarily be made in respect of the grant proposed for each department, provided that the Government may in their discretion include in one demand grants proposed for two or more departments, or make a demand in respect of expenditure which cannot readily be classified under particular departments.

(2) Each demand shall contain, first a statement of the total grant proposed, and then a statement of the detailed estimate under each grant divided into items.

(3) Subject to these rules, the annual financial statement shall be presented in such form as the Council may consider best fitted for its consideration by the Praja Sabha.

114. Stages of the debate....The Annual financial statement shall be dealt with by the Praja Sabha in two stages, namely:

(1) a general discussion; and
(2) the voting of demands for grants.

115. General discussion....(1) On a day to be appointed by the Prime Minister subsequent to the day on which the annual financial statement is presented and for such time as the Prime Minister may allot for this purpose the Praja Sabha shall be at liberty to discuss the statement as a at whole, or any question of principle involved therein, but this stage no motion shall be moved, nor shall the statement be submitted to the vote of the Sabha.

(2) The Minister-in-Charge of the Finance Department of any official member authorised by the Prime Minister shall have a general right of reply at the end of the discuss ion.

(3) The President may, if he thinks, fit, prescribe a time limit for speeches.

116. Voting Grants....(1) The voting of demands for grants shall take place in such order, and on such days not exceeding six days in the aggregate, as the Prime Minister may allot for the purpose.

(2) The Prime Minister shall fix a time limit for the discussion of any one demand or a group of demands. As soon as the maximum limit of time for discussion is reached, the President shall forthwith put every question necessary to dispose of the demand under discussion.

(3) On the last day of the allotted days at 4 p.m. the President shall forthwith put every question necessary to dispose of the demand under discussion and all other outstanding demands for grants.

117. Motions at this stage...(1) When a demand for a grant is made motions may be moved to omit or reduce the grant, but not to increase or alter its destination.

(2) When notice of a motion to omit or reduce any grant is given, it shall be accompanied by a brief note explaining the purpose of the motion.

(3) The subject-matter of a motion shall relate only to the particulars contained in the estimates on which the grant is demanded and the purpose for which it is demanded, and shall not touch on the policy or expenditure sanctioned under other heads except so far as such policy or expenditure is brought before the Praja Sabha by the items contained in the grant.

(4) A motion shall be clearly and definitely expressed and shall raise a definite issue.

(5) (a) When several motions relating to the same demand are offered, they shall be discussed in the order in which the heads to which they relate appear in the annual financial state ment.

(b) Motions falling under the same shall head shall be discussed in the order in which notices thereof have been received by the Secretary:

Provided that the President may in his discretion permit a departure from this sub-rule.

118. Notice of motions...If notice of a motion to omit or reduce any grant has not been given four clear days before the day on which the demand is under consideration, any member may object to the moving of the motion and such objection shall prevail unless the President in the exercise of his power allows the motion to be made at shorter notice.

119. Intimation to Finance Department...When the Praja Sabha has refused its assent to any demand or has assented to any demand subject to a reduction of an amount specified therein the Secretary shall send an intimation of the same to the Finance Department.

CHAPTER XI
STANDING COMMITTEES

124. Appointment of the Standing Committees...Standing Committees may be constituted for all or any of the following departments:

(l) Finance
(ii) Industries
(iii) Public Health
(iv) Education
(v) Agriculture
(vi) Forest; and
(vii) Co-operation.

125. Composition...(1) Every committee so constituted shall consist of the Minister-in-charge of the department concerned and 6 non-official members of the Praja Sabha, as the President in consultation with the Prime Minister and leaders of different groups in the Praja Sabha may select.

(2) Selection of non-official members...The President shall during the currency of the budget session of the Praja sabha make the section of non-official members for a Standing Committee on receipt of a request to that effect from the Minister-in-charge of the department concerned.

(3) The list of non-official members selected by the President shall be put on the Notice-board of the Praja Sabha. Within two days of the list being so put up any non-official members of the Praja Sabha may move a resolution for the removal of any name appearing on the list and the substitution of the name of any other non-official member not appearing on the list.

126. Chairman...The Minister-in-Charge of the department concerned shall be the Chairman of the Standing Committee.

127. Proceedings of Standing Committee shall not be disclosed by any member without the leave of the Chairman and no reference to the proceedings shall be made in the Praja Sabha except in so far as they have been disclosed with the leave or under the orders of the Chairman.

128. Vacancies...The President shall nominate members to fill vacancies as they occur amongst the non-official non-official members of the Standing Committees. In making his selection the President shall endeavour to give representation to the group previously represented by the member whose place has to be filled.

67. Board of Judicial Advisors Procedure Rules, 1941.

(*Extract*)

LEAVE TO APPEAL

VIII. An appeal shall be brought either in pursuance of leave obtained from the court appealed from, or, in the absence of such leave, in pursuance of special leave to appeal granted by His Highness upon a petition in this behalf presented by the appellant.

SPECIAL LEAVE TO APPEAL

IX. A petition for special leave to appeal to His Highness shall be filed before the Registrar of the Board. It shall state succinctly and clearly all such facts as it may be necessary to state to enable the Board to advice His Highness whether such leave ought to be granted and shall be signed either by a counsel or by the party himself if he appears in person or by his agent. It shall be accompanied by a copy of the judment sought to be appealed from and a copy of the judgment (if any) of each of the courts below. The petition shall deal with facts only so far as is necessary for the purpose of explaining and supporting the parti-

cular grounds upon which special leave is sought.

ADVICE

LII. The advice recorded by the Board shall indicate, by whom the costs of the proceedings before it and the courts below (if any) shall be paid and who should bear the costs of the reference. It shall not be delivered at or after the hearing and shall be treated as a confidential document till His Highness has passed orders on the same. It shall be handed over to the Registrar of the Board, who shall forward the same, to the Prime Minister for submission to His Highness.

LIII. When the orders of His Highness have been passed, the Registrar of the Board shall prepare a Decree or a Formal Order in terms of His Highness' Orders. The Decree or formal order besides embodying the orders of His Highness in respect of the subject matter of the proceedings before the Board, shall show how the costs incurred in them are to be borne.

LIV. When a Decree or Formal Order has been prepared as directed in the Rule proceeding, a copy of the advice and the Decree or the Formal Order as the case may be, shall be sent to the High Court, or to the Registrar of the Department from which the reference arose. The original record of the case shall be sent back to the Registrar of the court or department concerned, by the Registrar of the Board.

68. Pakistan Resolution of the Lahore Session of the All-India Muslim League, 22-4 March, 1940

While approving and endorsing the action taken by the Council and the Working Committee of the All-India Muslim League, as indicated in their resolution dated the 27th of August, 17th and 18th September and 22nd of October 1939, and 3rd of February 1940 on the constitutional issue, this Session of the All-India Muslim League emphatically reiterates

that the scheme of federation embodied in the Govcrnment of India Act, 1935, is totally unsuited to, and unworkable in the peculiar conditions of this country and is altogether unacceptable to Muslim India.

It further records its emphatic view that while the declaration dated the 18th of October 1939 made by the Viceroy on behalf of His Majesty's Goverment is reassuring in so far as it declares that the policy and plan on which the Government of India Act, 1939 is based will be reconsidered in consultation with the various parties, interests and communities in India, Muslim India will not be satisfied unless the whole constitutional plan is reconsidered de novo and that no revised plan would be acceptable to the Muslims unless it is framed with their approval and consent.

Resolved that it is the considered view of this Session of the All-India Muslim League that no constitutional plan would be workable in this country or acceptable to the Muslims unless it is designed on the following basis principles, viz. that geographically contiguous units are demarcated into regions which should be constituted, with such territorial readjustments as may be necessary, that the areas in which the Muslims are numerically in a majority as in the North-Western and Eastern and zones of India should be grouped to constitutute 'Independent State' in which the constituent units shall be autonomous and sovereign.

The adequate, effective and mandatory safeguards should be specifically provided in the Constitution for Minorities in these units and in the regions for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them and in other parts of India where the Mussalmans are in a minority adequate, effective and mandatory safeguards shall be specifically provided in the Constitution for them and other Minorities for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them.

69. Mr. Jinah's Demand for a Separate Homeland for Muslims, 22 March, 1940.

...

(*Extract*)

As far as our internal position is concerned, we have also been examining it and, you know, there are several schemes which have been sent by various well-informed constitutionalists and others who take interest in the problems of India's future Constitution and we have also appointed a sub-committee to examine the details of the schemes that have come in so far. But one thing is quite clear. It has always been taken for granted mistakenly that the Mussulmans are a Minority and of course we have got used to it for such long time that these setlled notions sometimes are very difficult to remove. The Mussulmans are not a Minority. The Mussulmans are a nation by any definition. The British and particularly the Congress proceed on the basis, well, you are a Minority after all what do you want ? What elso do the Minorities want ? just as Babu Rajendra Prasad said. But surely the Mussulmans are not a Minority. We find that even according to the British map of India we occupy large parts of this country, where the Mussalmans are in a majority such as Bengal, the Punjab, North-west Frontier Province, Sind and Baluchistan.

The problem in India is not of an inter-communal character but manifestly of an international one, and it must be treated as such. So long as this basic and fundamental truth is n:t realized, any Constitution that may be built will result in disaster and will prove destructive and harmful not only to the Mussulmans but to the British and Hindus also. If the British Government are really in earnest and sincere peace and happiness of the people of this sub-continent, the only course open to us all is to allow the major nations separate homelands by dividing India into "autonomous national states." There is no reason why these states should be anta gonistic to seeure to each other. On the other hand the rivalry and the natural desire and efforts on the part of one to dominate the social order and establish political supermacy over the other

in the government of the country will disappear. It will lead more towards natural good will by international pacts between them, and they can live in complete harmony with their neighbours. This will lead further to a friendly settlement all the more easily with regard to Minorities by reciprocal arrangements and adjustments between Muslim India and Hindu India, which will far more adequately and affectively safeguard the rights and interests of Muslims and various other Minorities.

It is extremely difficult to appreciate why our Hindu friends fail to understand the real nature of Islam and Hinduism. They are not religions in the strict sense of the word, but are, in fact, different and distinct social orders, and it is a dream that the Hindu and Muslims can ever evolve a common nationality and this misconception of one Indian nation has gone far beyond the limits and is the cause of most of your troubles and will lead India to destruction if we fail to revise our notions in time. The Hindus and Muslims belong to two different religious philosophies, social customs, literatures. They neither inter-marry nor inter-dine together and, indeed, they belong to two different civilizations which are based mainly on conflicting ideas and conceptions. Their concepts on life and of life are defferent. It is quite clear that Hindus and Mussulmans derive their inspiration from different sources of history. They have different epics, different heroes, and different episodes. Very often the hero of one is a foe of the other and, likewise, their victory and defeats overlap. To yoke together two such nations under a single State, one as a numerical minority and the other as a majority, must lead to growing discontent and final destruction of any fabric that may be so built up for the government of such a state.

Muslims of India cannot accept any Constitution which must necessarily result in a Hindu Majority Government. Hindus and Muslims brought together under a democratic System forced upon the Minorities can only mean Hindu Raj. Democracy of the kind with which the Congress High Command is enamoured would mean the complete destruction of what is most precious in Islam. We have had ample experiences of the working of the Provincial Constitutions during the last two and a half years and any repetition of such a Govern-

ment must lead to civil war and raising of private armies as recommended by Mr. Gandhi to Hindus of Sukhur when he said that they must defend themselves violently or non-violently, blow for blow, and if they could not, they must emigrate.

Mussulmans are not a Minority as it is commonly known and understood. One has only got to look round. Even today, according to the British map of India, 4 out of 11 Provinces, where the Muslims dominate more or less are functioning notwithstanding the decision of the Hindu Congress High Command to non-cooperate and prepare for civil disobedience. Mussulmans are a nation according to any definition of a nation, and they must have their homelands, their territory and their State. We wish to live in peace and harmony with our neighbours as a free and independent people. We wish our people to develop to the fullest our spiritiual, cultural, economic, social and political life in a way that we think best and in consonance with our own ideals and according to the genius of our people. Honesty demands and the vital interests of millions of our people impose a sacred duty upon us to find an honourable and peaceful solution, which would be just and fair to all. But at the same time we cannot be moved or diverted from our purpose and objective by threats or intimidations. We must be prepared to face all difficulties and consequences, make all the sacrifices that may be required of us to achieve the goal we have set in front of us.

70. Broadcast by Sir Stafford Cripps, Delhi, 30 March, 1942.

(*Extract*)

First of all you will want to know what object we had in view. Well, we wanted to make it quite clear and beyond any possibility of doubt or question that the British Government and the British people desire the Indian peoples to have full self-government, with a Consitution as free in every respect as our own in Great Britain or as of any of the great Dominion members of the British Commonwealth of Nations in the words of the Draft Declaration, India would be associated with the United Kingdom and other Dominions by a common allegiance

to the Crown but equal to them in every respect, in no way subordinate in any aspect of its domestic or external affairs.

The principle on which these proposals are based is that the new Constitution should be framed by the elected representatives of the Indian people themselves. So we propose that immediately hostilities are ended, a constitution-making body should be set up consisting of elected representative from British India and if the Indian States wish, as we hope they will to become part of the new Indian Union, they too will be invited to send their representatives to this constitution-making body, though, if they do, that will not, of itself, bind them to become members of the Union. That is the broard outline of the future.

There are those who claim that India should form a single united country: there are others who say it should be divided up into two, three or more separate countries. There are those who claim that provincial autonomy should be very wide with but few centrally controlled federal services ; other stress the need for centralization in view of the growing complexity of economic development.

These and many other and various ideas are worthy to be explored and debated, but it is for the Indian peoples, and not for any outside authority, to decide under which of these forms India will in future govern herself.

So we provide the means and the lead by which you can attain that form of the absolute and united self-government that you desire at the earliest possible moment. In the past we have waited for the different Indian communities to come to a common decision as to how a new Constitution for a self-governing India should be framed and, because there has been no agreement amongst the Indian leaders, the British Government has been accused by some of using this fact to delay the granting of freedom to India. We are now giving the lead that has been asked for and it is in the hands of Indians and Indians only, whether they will accept that lead and so attain their own freedom. If they fail to accept this opportunity the responsibility for the failure must rest with them.

71. Statement of Maharaja Hari Singh on Cripps Mission. (*Extract*)

We have yet to kuow the conclusions at which His Majesty's Government has unanimously arrived under the combined stress of British India's well-known demands and the requirements of the war situation to satisfy the legitimate aspirations of interests.

On the part of the States, a considerable factor in the Indian policy and an important party to be satisfied, there has been a tendency even within recent weeks to give prominence to the credo of 'Relations to the Crown'. These relations have so far been maintained through and effected by a Department set up by the will of the Crown, the policy and practice of the Department being determined by the Crown's functionaries. Logically therefore it would seem that the Princes cannot object to having dealings with a Central Government of India which the Crown may constitute. Nor have they any reason to assume that they would not get a square deal from such a Government.

x x x x

In any case, it is the duty of the Princes to show themselves the equals of nationals anywhere in the world.

x x x x

The Princes are justified in assuming that, in a Self-Governing India, every autonomous unit will share equally the fiscal and financial advantage accuring in such an India as well as the responsibilities and burdens entailed by the maintenance of peace and order and the provision of beneficient service and public utilities in the territories administered. And it should not be forgotten that these territories may have problems peculiar to their populations as well as to their physical conditions.

In the India of tomorrow, such of the Princes' prerogatives as enable them to afford a better life to their subjects and to

ameliorate their lot must remain. Other privileges, which may be merely matters of honour and glory, shedding effulgence on their personalities, are of comparatively small account when set beside other considerations such as the safe-guarding of resources necessary for uptodate Government and the relief of burdens borne by the State alone.

x x x x

In promising to support the proposals brought by Sir Stafford Cripps, the Chamber of Princes added the proviso that the support should be without prejudice to the right of individual States to lay their case before him and generally without prejudice to the inherent rights of the States. These rights it is not easy to define or catalogue when one considers the effect of the political practice inaugurated in 1860 and since maintained with the aid of 'usage and sufferance'. In any case, there is a piquant irony in the contrast between the Princes' reiteration the phrase-'Treaty Rights' and the Viceroy's suggestion that all Princes, for certain purposes, should voluntarily abdicate in favour of the Political Officers accredited to their courts.

When at the Round Table Conference the Princes assented to the working out of a Federal Constitution, they were prepared voluntarily to delegate some of their sovereign powers to a Federal Government. In the India of the future, it is possible that the matters committed to the Central Government would be far fewer than those recited in the Table of Federal Matters appended to the Act of 1935.

Unless, therefore, the proposals entrusted in Sir Stafford Cripps are fundamentally adverse to the interests of the Indian States and this is unthinkable there is no reason why there should not be ample common ground between the States and the rest of India.

x x x x

Freedom must be our watchword...freedom from crippling restrictions and strangling control, freedom from the subordination of India's interests to the interests of other parts of the Commonwealth.

72. Resolution of the Working Committee of the Indian National Congress, 2nd April, 1942.

The people of India have, as a whole, clearly demanded full independence, and Congress has repeatedly declared that no other status except that of independence for the whole of India could be agreed to or could meet the essential requirements of the present situation.

The Committee recognize that future independence may be implicit in the proposals, but the accompanying provisions and restrictions are such that real freedom may well become an illusion.

The complete ignoring of ninety millions of people in the Indian States, and their treatment as commodities at the disposal of their rulers, is a negation both of democracy and self-determination. While the representation of an Indian State in the constitution-making body is fixed on a population basis, the people of the State have no voice in choosing those representatives, nor are they to be consulted at any stage while decisions vitally affecting them are being taken. Such States may in many ways become barriers to the growth of Indian freedom, enclaves where foreign authority still prevails, and where the possibility of maintaining foreign-armed forces has been stated to be a likely contingency and a perpetual menace to the freedom of the people of the States as well as of the rest of India.

73. Resolution of the working Committee of the All-India Muslim League, 2nd April, 1942.

The Committee, while expressing their gratification that the possibility of Pakistan is recognized by implication by providing for the establishment of two or more independent Unions in India regret that the proposals of His Majesty's Government embodying the fundamentals are not open to any modification and therefore no alternative proposals are invited. In view of the rigidity of the attitude of His Majesty's Government with regard

to fundamentals not being open to any modification, the Committee have no alternative but to say that the proposals in their present form are unacceptable to them for the following reasons :

(1) The Mussulmans, after 25 years of genuine efforts for the reconciliation of the two major communities and the bitter experience of the failure of such efforts, are convinced that it is neither just nor possible, in the interests of peace and happiness of the two peoples, to compel them to constitute one Indian Union composed of the two principal nations—Hindus and Muslims : but this appears to be the main object of His Majesty's Government as adumbrated in the preamble of the Draft Declaration, the creation of more than one Union being relegated only to the real of remote possibility, and is purely illusory.

(2) In the Draft Declaration a constitution making body has been proposed with the primary object of creating one Indian Union. So far as the Muslim League is concerned, it has finally decided that the only solution of India's constitutional problem is the partition of India into independent zones: and it will therefore be unfair to the Muslims to compel them to enter such a constitution-making body whose main object is the creation of a new Indian Union. With conditions as they are it will be not only futile but on the contrary may exacerbate bitterness and animosity amongst the various elements in the country.

The machinery which has been proposed for the creation of the constitution-making body, namely, that it will consist of members elected by the newly elected Lower Houses of the eleven Provinces upon the cessation of hostilities, as a single electoral college by the system of proportional representation, is a fundamental departure from the right of the Mussulmans hitherto enjoyed by them, to elect their representatives by means of separate electorates, which is the only sure way in which true representatives of the Mussulmans can be chosen.

The constitution-making body will take decisions by a bare majority on all questions of the most vital and paramount character involved in the framing of the Constitution, which is a departure from the fundamental principles of justice and

contrary to constitutional practice so far followed in the various countries and Dominions; and the Mussulmans by agreeing to this will, instead of exercising their right and judgement as a constituent factor, be at the entire mercy of the constitution-making body in which they will be a minority of about 25 per cent.

(3) The right of non-accession to the Union as contemplated in the Draft Declaration has been conceded presumably in response to the insistent demands by the Mussulmans for the partition of India; but the method and procedure laid down are such as to negative the professed object; for in the draft proposals the right of non-accession has been given to the existing Provinces which have been formed from time to time for administrative convenience and on no logical basis.

The Mussulmans cannot be satisfied by such a Declaration on a vital question affecting their future destiny, and demand a clear and precise pronouncement on the subject. Any attempt to solve the future problem of India by the process of evading the real issue is to court disaster.

(4) With regard to the Indian States, it is the considered opinion of the Committee that it is a matter for them to decide whether to join or not to join or form a Union.

(5) With regard to the treaties to be negotiated between the Crown and the Indian Union or Unions, the proposals do not indicate as to what would happen in case of disaggreement in the terms between the contracting parties ; nor is there any provisions made as to what would be the procedure when there is a differences of opinion in negotiating a revision of treaty arrangements with the Indian States in the new situation.

(6) With regard to the interim arrangement there is no definite proposal except the bare statement that His Majesty's Government desire and invite the effective and immediate participation of the leaders of the principal sections of the Indian people in the counsels of their country of the Commonwealth, and of the United Nations. The Committee are therefore unable to express their opinion until a complete picture is available. Another reason why the Committee unable to express their opinion on the interim arrangements for participation in the counsels of the country is that Sir Stafford Cripps has made it clear that the scheme goes through

as a whole or is rejected as a whole and that it would not be possible to retain only the part relating to the immediate arrangements at the Centre and discard the rest of the draft scheme : and as the Committee has come to the conclusion that the proposals for the future are unacceptable, it will serve no useful purpose to deal further with the question of the immediate arrangements.

74. Resolution on the 'Unity of India' passed by the All-India Congress Committee, 29 April to 2 May, 1942.

The All-India Congress Committee is of opinion that any proposal to disintegrate India by giving liberty to any component state of territorial unit to secede from the Indian Union or Federation will be highly deterimental to the best interests of the people of the different States and Provinces and the country as a whole and the Congress, therefore, cannot agree to any such proposal.

75. Cripps Mission from the Marquess of Linlithgow to Mr. Amery, May, 18, 1942.

(Extract)

First of all for a word about the States. I fear that Cripps' comment on the paramountcy issue is of a piece with certain other not very carefully considered statements which he made (so far I can see without any authority from the Cabinet and certainly without consultation with me) ; and we shall have to regard our hands as free in regard to this, for the issue is one of fundamental importance. I am myself quite unconvinced by Cripps' arguments, but, apart from that, this is not the sort of major issue which can properly be given away by any individual Cabinet Minister, or even by the Cabinet as a whole, without a very close investigation. You may be perfectly certain that you are right in thinking that few, if any, of the Princes, even at the price of escaping from paramountcy, would

dream of coming into a union in which their domestic affairs would be subject to control or interference by an Indian Government, more particularly an Indian Government to which as you say, "local agitators in their States" would have pretty easy access.

I am not much impressed either by the suggestion that the States might form a federation or dominion of their own and I doubt if Congress or the Muslim League would take any such proposal too seriously. It is a good debating suggestion but I would not treat it more seriously than that, and the practical difficulties presented by the existence of these minor States and the problem of adjusting relations between a "State Dominion", a Dominion of British India, and such units as might elect, whether in British India or in the States to remain outside either dominion would be not a very easy one.

76. From Maharaja Jam Saheb of Nawanagar to Sir H. Craik, June 1, 1942.

(Extract)

The Indian Princes have no desire to raise any controversial issues in the duration of the war and wish to concentrate all thought and energy on ensuring a speedy and decisive victory. Accordingly, as you are aware, it has been my policy as Chancellor to postpone all avoidable matters which have no direct bearing on war effort and which may be inconvenient to meet at this juncture. Nevertheless, certain recent happenings, arising out of the Cripps Mission, have caused. and are bound to accentuate, grave anxiety to the Princes and their loyal subjects, and have occasioned intense feeling of profound disappointment in the States. These developments, I must state in all frankness, have been a particular shock to the Indian Princes who feel special personal attachment to His Majesty the King Emperor, and have full faith in Britain's respect for Treaties and in the bonafides of His Majesty's Government and High Excellency the Crown Representative. I feel confident that it could not have been the intention of His Majesty's Government to create an impression which unfortunately has

been created and is being exploited by those who are opposed to war effort and who wish to put a damper even on the unconditional and spontaneous war effort of the States. Accordingly, I deem it my duty to State briefly but in all frankness the more important of these points, so that you may submit them to His Excellency the Crown Representative with the request that he may urge upon His Majesty's Government the necessity of reassuring the States, unequivocally and without delay, on these points and thereby dispel the misgivings which are apt to do great harm:

(a) the Indian Princes regard their Treaties and Engagements and the protection guaranteed thereunder as the sheet-anchor of their relationship with the British Crown;

(b) the scrupulous respect for these Treaties and Engagaments has been solemnly assured to the States by Her Majesty the late Queen Empress Victoria, by the Emperors who succeeded her and by successive Viceroys on behalf of His Majesty's Government;

(c) His Excellency the present Viceroy also has, in his public addresses as also in private conversations, repeatedly assured us of the scrupulous respect for the Treaties and Engagements which bind the Indian Princes and their loyal subjects to their beloved King Emperer. Moreover, the Indian Princes have been inspired by the fact that His Majesty's Government has gone to war for the High principle of Civilisation which specifically include respect for Treaties and Engagements;

(d) it was, therefore, that the Indian Princes noted with particular satisfaction that the Declaration of August 1940 as elucidated authoritatively in Parliament by the Secretary of State for India was intended specifically to ensure the Crown's Treaty obligations to States. As such, it has been a great disappointment to the Indian Princes that the new draft Declaration brought by Sir Stafford Cripps which in the words of the Prime Minister, sought to clothe with precision the Declaration of August, 1940, omits altogether the reference to

Crown's Treaty obligations to States which had been one of the basic planks of all previous Declarations relating to the constitutional advance of India. This inexplicable and unexpected omission, of the Crown's obligations to States, in the Draft Declaration has not unnaturally caused great misgivings in the minds of the Princes and their loyal subjects. In fact it has openly been asked whether the Princes were being ignored as they had no nuisance value; while the Princes themselves feel that their spontaneous and unconditional war effort deserved better than the deletion in the Draft Declaration of the express guarantee of the Crown's obligations to them assured in the Declaration of August 1940;

(e) moreover, it has given occasion to Pandit Jawaharlal Nehru and others to declare publicly with great flutter that these Treaties must be scrapped, and in fact he (Pandit Jawaharlal Nehru) has recently gone to the extent of declaring that those who talk of Treaties with Indian States are "Lunatics, knaves or fools". He appears to have forgotten the lesson of which was reminded in a published statement by my Secretary that even the "All Parties Report, prescribed over by the late Pandit Moti Lal Nehru (father of Pandit Jawaharlal Nehru) and signed among others by the Rt. Hon'ble Sir Tej Bahadur Sapru specifically recognised that the States" Treaties must be respected in any future constitution of India;

(f) it is significant that the Draft Declaration makes special mention of the protection of "racial and religious minorities and in referring to this point Sir Stafford in his recent statement in the House of Commons stated that:

> "In view of our pledges, we could not leave the minorities to reply upon this alone. We, therefore, inserted an express clause as to the treaty governing minority protection which will be found in paragraph c (ii) of the Draft Declaration."

The States are surely entitled to claim even more minorities that the Solemn undertakings with them must be scrupulously respected, particularly as they heve the honour of alliances and friendship with the British Crown and have consecrated it by their unconditional assistances and cooperation in all crises which faced the Empire;

(g) in this connection, attention may be invited to the provision at the end of clause (c) of the draft Declaration:
"Whether or not an Indian State elects to adhere to the constitution it will be necessary to negotiate a revision of its Treaty arrangements so far as this may be required in the new situation."
This statement has created the impression that it is proposed to have a compulsory revision of Treaty arrangements whether or not the States concerned consent to such revision. In later elucidation we were told that this provision was intended to apply to economic matters of common concern to British India and the States, but this has not been clearly stated in the Declaration itself. Moreover, even if it be so, it is obvious that the objective in view could be secured by negotiating supplemental Treaties with regard to these economic matters arising out of the new Constitution without affecting or revising the whole of the original Treaties or Engagements. Besides it should be made clear that the execution of these supplement treaties would obviously be subject to free consent of the States concerned;

(h) apart from consideration of Treaty obligations and faith in plighted word which bind the British Crown and the Princes in relationship which is inviolate, and inviolable, the Princes are imbued with genuine and deep loyality to the person of His Majesty the king Emperor. As such, I personally and many others who share my views decline to believe that the Crown wishes to give up its obligations to States or has no further use of them or finds their alliances, their loyal cooperation, services

and assistance of no value, or that the Crown is advised that it will not be in a position effectively to discharge its obligations towards States;

(i) nevertheless some of these recent utterances have caused grave concern and personal shock to many of us, and it is fell that if matters are left as they are in the present position, they are bound; to have serious repercussions on the younger and future generations of Princes, a consequence which must be deplored in the interests of the British Commonwealth of Nations as much as in the interest of India and the States. Moreover, the situation is already being exploited by some of the British Indian Political Parties who are hostile to the British connection;

(j) in view of the aforesaid consideration, I would urge with all the emphasis at my command that the earliest opportunity may be utilised to ensure the States through an authoritative statement on behalf of His Majesty's Government, that the British Government stands true to, and firmly by, its Treaty obligations to the States and will continue to protect them according to these solemn obligations.

Let me also refer briefly to a few other factors which have contributed to the aforesaid anxiety of the Princes, I am citing them in the confident hope that the view point of the Princes will be kept in view if and when similar circumstances recur again;

(a) certain important matters relating to Defence were discussed in connection with the Cripps Mission, and representatives of the Congress and Muslim League were brought in consultation with His Excellency the Commander-in-Chief to evolve proposals connected with the appointment of an Indian Defence Member. You will appreciate, that both under their Treaties, and otherwise the States are vitally concerned in this matter, and yet in these negotiations the States have entirely been ignored;

(b) various important references, made in connection with the Cripps Mission both in India and in the House of Commons, have been confined to British India and

Indian leaders as if the Indian States did not matter. So much so, that it was stated that representatives of certain parties, and communities, which were specifically mentioned, had expressed their readiness to stand by Great Britain in the defence of their country. No reference to the spontaneous and unconditional support of the Indian Princes and their loyal subjects was made in this authoritative statement by the Lord Privy Seal;

(c) throughout the R.T.C. and previous constitutional discussions, the Rulers and their Ministers were treated by His Majesty's Government and their representatives, as they should be treated as the sole accredited representatives of the States. This time however, presumably through the efforts of Pandit Jawarharlal Nehru and others, Sir Stafford Cripps received a British Indian as representative of the so-called State Subjects Conference, which is an adjunct of the Congress and generally speaking is a self-assumed tribune of the very small minority of disgruntled elements in the Indian States. We do not know whether this step was taken with the concurrence of His Majesty's Government, but at any rate it has placed the Princes in a very awkward position vis-a-vis their loyal subjects. In this connection, it may be pointed out that even the All Parties Report of 1928 to which reference has been made in sub-para (e) of Para I above recognised "that the Rulers of the Indian States alone represent their governments;"

(d) it seems authoritatively indicated that once a State adheres to the proposed Indian Union it will have to remain there even if the Union should declare itself a Republic, or decides to break away from the British Empire, or decrees that monarchical rule in the States should be replaced by Republics;

(e) we have been told that the proposed constitution-making body would be free to discuss internal affairs of the States, though on previous occasions it was clearly understood that constitutional discussions will be limited to matters of common concern to British India and the States which appertain to the Centre. In

this connection, let me invite attention to the resoultion passed unanimously at the last session of the chamber of Princes and the relevent extracts from my speech in moving the aforesaid Resolution, which would show that the Indian Princes are sympathetic to, and are prepared to make every reasonable contribution for, the constitutional advance of India. They desire, however, that they should be kept free from purely British Indian controversies and that British India should not interfere with the internal affairs of the States;

(f) during the Cripps Negotiations, reference has been made to only a representative of India on the Imperial War Cabinet, and the names of certain British Indian leaders were openly canvassed for it. In this connection, it may be pointed out that in the Imperial War Cabinet and Conference of 1917 as also at thc Peace Conference of 1919, both Indian States and British India were separtely repraesented.

IV. It is appreciated that in the interests of India and the Empire as a whole, a single Union would undoubtedly be the best solution of India's constitutional problem; at the same time, it may be that unforeseen circumstances may compel a large number of States or groups of States not to adhere to the new Union. Accordingly, the States Delegation asked Sir Stafford Cripps that in that contingency, the non-adhering States should be accorded the option of having a union of their own with full sovereign status in accordance with a suitable and agreed procedure devised for the purpose. It was pointed out that provision to that effect had been made for non-adhering Provinces. We were told that this eventuality had not been considered in connection with the Draft Declaration. This shows that apart (far ?) from receiving treatment better than the Provinces to which the States are entitled on constitutional and historic grounds, they were not being treated even on par with the Provinces in respect of future constitutional developments.

77. Cripps Mission, Letter from the Secretary to the Crown Representative to the India office, June 25, 1942.

2. His Highness's letter is carefully documented and it will be seen that it is signed by him in his capacity as Chancellor of the Chamber of Princes and is described in the final sentence as an official letter. It concludes with a specific request that "an authoritative and early announcement" should be made by His Majesty's Government in order "to eliminate the Princes" serious concern and misgivings on these matters.

3. His Excellency the Crown Representative has little doubt that such concern and misgivings are in fact genuinely entertained by the great majority of Indian Princes, particularly by the more conservative among them, and is not inclined to attach any great importance to such public declarations in the opposite sense as have been made by their Highnesses of Kashmir and Indore. The Princes may to some extent derive comfort and re-assurance from the generous terms in which His Majesty has referred in his message to India published on the 13th June 1942 to "their traditions of loyalty and attachment to his Throne" and to their unstinting offers of men and money and personal services for the war. But they are not likely to be reassured by a reference to the fact that Sir Stafford Cripps' offer was in terms withdrawn when the negotiations broke down. The Princes probably feel that should negotiations be resumed in the event of the great political parties in British India showing a more responsive attitude, the Cripps declaration would certainly from the starting point of such negotiations and would be regarded as the minimum measure of concession and advance open to discussion.

4. In particular, preplexity is expressed in para II (a) of the Chancellor's letter with regard to the statement made by the Lord Privy Seal in the house of commons to the effect that he was "certain that this House would wish the British Administration in India to do all it can to encourage and expedite the development of suitable representative institutions in all Indian States." It is impossible to reconcile this statement with the earlier declaration of policy of His Majesty's Government made in the form of replies to questions asked in Parlia-

ment in 1938, and referred to in His Excellency the Crown Representative's address to the Chamber of Princes in 1939. On the first occasion, on 21st February, 1938, the Under Secretary of State replied that "It is not the policy of the Paramount Power in ordinary circumstances to intervene in the internal administration of full powered States." This was confirmed on the 16th December of the same year when the reply given to Sir John Wardlaw-Milne was that "His Majesty's Government have no intention of bringing any form of pressure to bear upon Rulers to initiate constitutional changes. It rests with the Rulers themselves to decide what form of Government they should adopt in the diverse conditions of Indian States".

5. There thus exists a direct discrepancy in a matter of cardinal importance, which, in His Excellency's opinion, requires elucidation at the earliest possible opportunity, since, if the view expressed by the Lord Privy Seal is to be interpreted as the considered view of His Majesty's Government as now constitued, our existing policy in regard to constitutional reforms in States stands in need of radical revision.

6. I am also to invite particular attention to paragraph III (d) of the Chancellor's letter which contains a brief and surprisingly restrained reference to what is perhaps the most legitimate of all the objections which the Princes could raise to the draft declaration, namely, that by acceding to the new Union they would be committed to a possible...perhaps even probable.....severance of their cherished relations with the British Crown. His Highness has not mentioned the obvious remedy, i. e. that in joining the, Union, the States should be allowed to reserve the right to secede from it if at any time the Union were to decide to leave the British Commonwealth of Nations. His Excellency believes that, in the absence of such a provision, few if any, of the great States would join the Union.

7. In conclusion I am to make it clear that His Excellency is strongly of opinion that so fully documented a communication, emanating from such a source and couched in terms of genuine apprehension clearly calls for a definite answer, the nature of which can only be determined by His Majesty's Government.

78. Cripps Mission request by chamber of Princes for statement of policy by his Majesty Government Memorandum by the Secretary of State for India, September 4, 1942.

The Chancellor of the Chamber of Princes (the Jam Saheb of Nawanagar) is very shortly arriving in this country and will almost certainly ventilate this matter while he is here. It is very desirable to be in a position, whenever he refers to the matter (which he may take an early opportunity of doing), to say that the Crown Representative is already composing his reply on lines which can be indicated broadly to him as set out in this paper. Unless, therefore, any of my colleagues wish the matter to be discussed in Cabinet, I propose to despatch the draft telegram to the Crown Representative not later than the 8th September.

2. The Chancellor, in his letter of the Ist June to the Viceroy's Political Adviser, complains:

(i) of the failure of the Draft Declaration of March 1942 to inclued an assurance that the British Government stands by its treaty obligations to the States, and of the apparent intention to impose treaties on the rulers;

(ii) of the Lord Privy Seal's remarks in the House of Commons on the 28th April (Hansard, Cols. 834 and 835), which the Chancellor interprets as meaning that the Paramount Power intends to impose democratic institutions on the States;

(iii) of various smaller grievances in connection with the "Cripps Negotiations," which, on the whole, need not concern the war Cabinet (except for the complaint that, by joining an Indian Union, they might involve themselves in succession from the Empire);

(iv) of the absence of recognition of the right of non-adhering States-like non-adhering Provinces—to form a separate Union of their own.

3. In the view of the Viceroy and his advisers the Princes feel genuinely that their interests were insufficiently considered both in the Draft Declaration and in the discussions arising from it. The Viceroy accordingly

suggests that a considered reply, "the nature of which can only be determined by His Majesty's Government," should be sent. I have accordingly agreed with the Viceroy on the following line of reply:

(i) the absence from the Draft Declaration of a special reference to the State's treaty rights is of no significance; the Prime Minister's statement of the 11th March made quite clear that the fulfilment of treaty obligations to the States remains an integral part of His Majesty's Government's policy. Moreover, these treaties will only be altered by negotiation and agreement;

(ii) The Lord Privy Seal said that the House would wish the British administration in India "to do all it can to encourage and expedite the development of suitable representative institutions in All Indian States." This does not necessarily mean the imposition of democracy (which in any case might be quite unsuitable). It mean that the Paramount Power will continue, as at present, to urge upon Rulers the establishment of institutions for representing the views and grievances of their subjects with a view to their being remedied (viz. administrative reforms)-constitutional changes (which might involve restriction on the Ruler's powers) may or may not be a sequel, but that is for the Rulers themselves to decide; no pressure to introduce such changes will be applied by the Paramount Power on the Ruler, as it is in the case of administrative reform. (This conforms with what has been said here in Parliament as recently as 1938 and with the Viceroy's own pronouncements on the subject in India. The argument, though somewhat sophistical is at any rate consistent with our declared policy in a matter on which the Princes are very sensitive).

(iii) replies on the minor points need not concern us (the succession point is covered under IV);

iv) between now and the next Indian constitutional discussions the Princes may certainly consider the outline of a scheme for a separate Union, if they wish. They might also consider what terms they might wish to demand of an Indian Union before they join it, e.g. the

right to secede from the Union if the Union secedes from the Empire. Consideration of these points could certainly not be excluded from future discussions.
(In actual fact) the Viceroy hopes-- and proposes that we suggest privately to the Princes that—the idea of a separate States Union might be used by them merely as a bargaining counter to secure better terms for accession to an Indian Union, and not as a serious objective. This seems sound).

4. The question arises whether a reply on these lines should be published. The Victroy assumes it will; my view is that it should not, since it is in effect an explanation of why we consider that there should be no new declaration of policy towerds the States at this stage. If the reply does not have the effect of satisfying the Princes, and if the Jam Saheb presses the matters strongly, it might conceivably be necessary to make some statement in parliament, but I am anxious to avoid it since there is little we can say and it might make matters worse for them by stimulating criticism in other quarters.

5. Finally, the Viceroy and I remain agreed that we should press on as vigorously as possible with measure (such as internal organisation, pooling of judicial and police services between co-operative groups of States, absorption where possible of the administration of smaller by that of larger States & c.) towards making the lesser States more fit for survival in the modern world. The Viceroy hankers a little after a public pronouncement reaffirming the Crown's existing obligations to protect the States, linked with a warning that we interpret this only to mean protection of such States as are fit to survive. I am against any more pronouncements, and particularly against a qualification of the treaty obligations. It is because internal reforms are in the State's own interests that I think we should continue to urge the Rulers to adopt them.

6. The course of action I propose to authories is therefore:

(a) the issue in India, on behalf of the Viceroy to the Chancellor of the Chamber of Princes, of a reply on the lines laid down in paragraph 4, indicating no change in our policy towards the States.

(b) this reply to be expressly limited to confidential circulation among the Princes (hints of its contents may no doubt leak out in due course, but it will not be in any sense a formal declaration);

(c) the avoidance of any new formal declaration about the sanctity of the Princes treaties at this stage, even though it is possible that we might have to make some reference to the subject in an Indian debate (even this however I should prefer to avoid);

(d) the continuance and intensification, so far as this can be done without alienating the more important Ruler's of our present policy of bringing the States into line with modern administrative standards.

79. Resolution of the Indian States Delegation, 1942.

The Indian States delegation unanimously adopted the following resolution in respect of the proposals of his Majesty Government.

(a) that this chamber welcomes the announcement made in the House of Commons on March 11th 1942, by the Prime Minister and the forthcoming visit to India of the Lord Privy Seal and leader of the House of Commons, and expresses a hope that it may help to unite India, to intensify further her war efforts and to strengthen the measures for defence of the Motherland;

(b) that this chamber has repeatedly made it clear that any scheme to be acceptable to the States must effectively protect their rights arising from treaties, engagements and sanads or otherwise and ensure the future existence of sovereignty and autonomy of the States thereunder guaranteed, and leave them complete freedom duly to discharge their obligation to the crown and to their subjects: it therefore, notes with particular satisfaction the reference in the announcements of the Prime Minister to the fulfilment of the treaty obligations to the Indian States;

(c) That this chamber authorises its representatives to carry on the discussions and negotiations for constitu-

tional advance of India with due regard to successful prosecution of war and interests of the States, and subject to the final confirmation by the Chamber and without prejudice the right of the individual States to be consulted in respect of any proposals affecting their treaty or other inherent rights.

80. Cripps Mission (Maharaja Jam Saheb of Nawanagar to Sir S. Cripps), September. 10, 1942.

(*Extract*)

The Indian States Delegation unanimously adopted the following resolution in respect of the proposals of His Majesty's Government which you discussed with them:

"The attitude of the Indian States in general on the mission of the Lord Privy Seal is summed up in the resolution on the subject which was adopted unanimously at the recent Session of the Chamber of Princes. The Indian States will be glad as always, in their contribution, in every reasonable manner compatible with the soveregnity and integrity of the States, towards the framing of a new Constitution for India.

The States should be assured, however, that in the event of a number of States not finding it feasible to adhere, the non-adhering States or groups of States, so desiring would have the right to form a Union of their own with full sovereign status in accordance with a suitable and agreed procedure devised for the purpose."

x x x x x x

RESOLUTION

(a) that the Chamber welcomes the Annoncement made in the House of Common on the 11th March, 1942 by the Prime Minister and the forthcoming visit to India of the Lord Privy Seal and leader of the House of Commons, and expresses the hope that it may help to unite India to intensify further her war effort and to strengthen measures for the defence of the Motherland.

(b) that this Chamber has repeatedly made it clear that any scheme to be acceptable to the States must effectively protect their right arising from Treaties, Engagements and Sanads or otherwise and ensure the future existence, sovereignty and autonomy of the States thereunder guaranteed, the leave them complete freedom duly to discharge their obligations to the Crown and to their subjects it therefore notes with particular satisfaction in reference in the Announcement of the Prime Minister to the fulfilment of the Treaty obligations to the Indian States.

(c) that this Chamber authorises its representatives for the constitutional advance of India with due regard to the successful prosecution of war and the interests of the States, and subject to final confirmation by the Chamber and without prejudice to the right of the Individual States to be consulted in respect of any proposals affecting their Treaty or other inherent rights.

81. Naya Kashmir.

(Extract)

THE CONSTITUTION OF THE STATE

Citizenship : Its Basic Rights and Obligations,

1. A single State Citizenship is hereby established for all citizens of Jammu, Kashmir, Ladakh and the Frontier Regions, including the Poonch and Chinani illaqas.

The equality of the rights of all citizens, irrespective of their nationality, religion, race, or birth, in all spheres of national life-economic, political, cultural, and social shall...be an irrevocable law.

Any direct or indirect restriction of these rights. or conversely the establishment of direct or indirect privileges for any citizens or class of citizens on account of nationality, religion, race or birth, as well as the propagation of national, racial or religious exceptionalism or hatred and contempt shall—be punished by law.

2. Freedom of conscience and of worship shall be guaran-

teed for all citizens.

3. In conformity with the interests of the people, for the purpose of promoting political awakening and strengthening the national resurgence, all Citizens shall be guaranteed by law:

Freedom of speech
Freedom of the Press
Freedom of Assembly and Meetings
Freedom of Street Processions and Demonstrations

4. In conformity with the interests of the people and for the purpose of developing self-expression through the organisation and political activity of the masses of the people, all Citizens shall be ensured the right of combining in public organisations : trade unions, co-operative societies, women's and youth organisations, sport and self-defence organisations, political parties and cultural, scientific and technical societies.

5. Inviolability of the person shall be ensured to all Citizens. No Citizen may be arrested or detained except by decision of a Court of Law, or by the sanction of the Advocate General of State.

6. The privacy of the homes and secrecy of correspondence of Citizens shall not be violated except in accordance with Law.

7. The defence of the Motherland is the supreme and sacred duty of all Citizens. Treason to the Motherland violation of oath, desertion to enemies of the Motherland, impairing the military power of the State, espionage shall be punishable with the full severity of the Law as the gravest crime.

In pursuance of this sacred task every Citizen is obliged to train himself to use, and shall be ensured the right to bear arms.

Universal compulsory military service shall be established by law.

8. All Citizens have the right to work, that is, the right to receive guarantee work with payment for their labour in accordance with its quantity and equality subject to a basic minimum and maximum wage established by law. In the

absence of the provision of employment, Citizens are entitled to security of the necessaries of decent existence for themselves and their families by universal social insurance.

The right to work shall be ensured by the planning of national economy, by the advance of industrialisation of the country, by the steady growth of productive forces, and the simultaneous raising of the standard of life of the people whereby economic crisis and unemployment shall be eliminated.

9. All Citizens shall have the right to rest.

This right shall be ensured by the reduction of the working day to eight hours maximum, the establishment of annual vacations with pay for workers and employees and the provision of a wide net work of sanitoriums, rest homes and clubs for the accommodation of working people.

10. All Citizens shall have the right to material security in old age as well as in the event of sickness and loss of capacity to work.

The right shall be ensured by the wide development of social insurance of workers and employees at the expense of the State, free medical aid for workers and the provision of wide network of health resorts for the use of working men and women.

11. All Citizens shall have the right to education.

This right shall be ensured by universal compulsory elementary education, free of charge. In addition a wide system of States scholarships shall be provided for poor students in the higher schools and universities. The mother-tongue shall be the medium of instruction. Free vocational technical and agronomic education shall be organized for adult workers in the fields and factories.

12. Women citizens shall be accorded equal rights with men in all fields of national life: economic, cultural, political, and in the state services.

These rights shall be realized by affording women the right to work in every employment upon equal terms and for equal wages with men. Women shall be ensured rest, social insurance and education equally with men. The law shall give special protection to the interests of mother and child. The provision of pregnancy leave with pay and the establishment of a wide network of maternity homes, nurseries and kinder-

gardens shall further secure these rights.

13. All children born in the State shall be ensured equality of opportunity irrespective of accidents of birth and parentage.

The State shall watch and protect our children as the greatest wealth the world possesses. In all questions of administration or legislation, medical, educational, domestic, municipal or industrial, the interests of the child shall be the paramount consideration.

14. All Citizens shall be secured protection by the laws and recourse to the courts through an administration of justice which shall be quick, cheap and impartial.

This right shall be ensured by the elective character and the independence of the judiciary; by the independence of the office of the Advocate General and State Advocates; by the provisions of People's Courts and Tehsil Courts to decide the majority of cases locally; by the use of the local language in Court proceedings; by the certainty, and codification of laws; by the equality of all Citizens before the law.

15. The right of personal property of Citizens, as well as the right of inheritance of personal property of Citizens, is protected by law within the limits of the planned economy of the State.

No person shall own immovable property in the State who does not fulfill a productive role inside the State in accordance with the National Economic Plan. This shall not operate to divest a pensioner or infirm person property legitimately acquired by him during his working life.

16. Work in the State of Jammu and Kashmir shall be an obligation and a matter of honour to all citizens capable of work.

17. The State of Jammu and Kashmir grants the right of asylum to foreign citizens persecuted for defending the interests of the masses, for their scientific activity, or for their struggle for national liberation.

18. Every citizen of the State is obliged to observe the Constitution of the State, to carry out the laws, to observe labour discipline, to honestly fulfil social duties, and to respect the rules of the community.

THE NATIONAL ASSEMBLY

19. The highest legislature of the State, the National Assembly, is elected by Citizens of the State by electoral districts on the basis of one deputy per 40,000 population, for a period of five years.

The National Assembly shall elect its own Speaker and Officers and shall determine its own procedure. A law shall be considered adopted by the National Assembly if approved by a simple majority vote and if it receives the Ruler's assent.

Laws adopted by the National Assembly shall be published in the Urdu language, as well as the language of the nationalities of the State over the signatures of the Ruler and the Speaker of the Assembly.

The National Assembly elects a Credentials' Commission which verifies the credentials of Deputies of the Assembly.

20. A Deputy of the National Assembly shall not be prosecuted or arrested without the consent of the National Assembly, and in the period when the National Assembly is not in session, without the consent of the Speaker of the National Assembly. In no case shall imprisonment or constraint operate to prevent a deputy from participating in the deliberations and decisions of the National Assembly, save by a decision of the the National Assembly taken after the Deputy has been afforded the opportunity to speak in his defence.

The Speaker shall be empowered to issue summons to any person having the detention or custody of a Deputy to produce him in order that he may attend a session of the National Assembly.

21. The National Assembly appoints when it thinks fit, investigating and auditing commissions upon any question.

All institutions and officials are obliged to comply with the demands of such Commissions and to supply them with the necessary materials and documents.

22. After the elections, the Ruler shall convene the newly-elected National Assembly within a period of one month.

When the term of the National Assembly expires, or in the event of its dissolution before the expiration of its term, the Ruler shall fix new elections within a period of not more than two months from the date of the expiration of its authority or

of the dissolution, as the case may be.

23. Subject to the general control of H.H. the Maharaja Bahadur the jurisdiction of the National Assembly shall include:

(a) representation of the State in exterior relations, conclusion and ratification of treaties with other States;
(b) approval of alterations of the boundaries of the States;
(c) organisation of the Defence of the State and the direction of its armed forces;
(d) foreign trade upon the basis of State monopoly;
(e) protection of State security;
(f) establishment of the National Economic Plan of the State;
(g) approval of the State Budget;
(h) administration of banks, industrial and agricultural establishments and enterprises as well as trading enterprises;
(i) regulation of currency and the direction of the monetary credit system;
(j) administration of transport and means of communication;
(k) organization of State insurance;
(l) contracting and granting loans;
(m) establishment of the fundamental principles for the use of land as well as the exploitation of deposits, forests and waters;
(n) establishment of the fundamental principles in the field of education and protection of public life;
(o) organization of a unified system of national economic accounting;
(p) establishment of the principles of labour laws;
(q) laws on the citizenship of the State and the rights of foreigners;
(r) legislation on legal procedure, court establishments, criminal and civil codes;
(s) organization and control of the radio broadcasting system;
(t) legislation for the protection and development of

nationalities;

(u) organisation for an archaeological survey; legislation for the protection and rehabilitation of monuments;

(v) legislation in furtherance of this constitution, upon all aspects of national life.

THE COUNCIL OF MINISTERS OF THE STATE

24. The Council of Ministers of the State is responsible to the National Assembly.

25. Ministers of the State direct the branches of the State administration which come within the jurisdiction of the National Assembly.

Ministers of the State issue within the jurisdiction of their respective departments orders and instructions on the basis and in fulfilment of existing laws, as well as of decisions and orders of the Council of Ministers, and verify their execution.

26. Ministers of the States all divide among themselves the following branches of administration.

Defence	—Agriculture & Animal Husbandry
Foreign Affairs	—State Grain and Livestock Farms
Foreign Trade	—Finance and Banking
Railways	—Home Trade
Communications	—Home Affairs
Water Transport	—Justice
Heavy Industry	—Health
Defence Industry	—Education
Food Industry	—Local Industry (Including cottage Industries)
Light Industry	—Municipal Economy
Timber Industry	—Social Welfare

THE RULER OF JAMMU AND KASHMIR

27. The ruler of Jammu and Kashmir shall:

(a) convene sessions of the National Assembly twice a year; shall convene extraordinary sessions of the

Assembly at his own wish or at the request of the speaker of the Assembly; and

(b) dissolve the National Assembly and fix new elections;

(c) conduct a referendum upon his own initiative or upon the demand of the majority of the legislators;

(d) declare general or partial mobilisation;

(e) ratify international treaties after they have been approved by the National Assembly.

(f) summon the leader of the largest single party in the National Assembly to form the Ministry.

ELECTORAL SYSTEM.

28. Deputies to the National Assembly as well as to the Peoples' Panchayats are selected by the electors upon the basis of universal equal direct suffrage by secret ballot.

Franchise shall be universal: all Citizens of the State who have reached the age of eighteen years, irrespective of race and sex, nationality or religion, educational qualifications, residential qualifications, social origin,property, status, or past activity shall have the right to participate in the elections of deputies and to be elected with the exception of insane persons and those deprived of electoral rights by court sentence.

Franchise shall be equal: every Citizen takes part in elections upon an equal basis. Every Citizen shall have one vote, provided that, during the transitional period, Sikhs, Kashmiri Pandits and Harijans shall be provided with two reserved seats each, and for this purpose they shall exercise the right of a second vote.

Women shall have the right to elect and to be elected upon equal terms with men in all institutions of the State.

29. Citizens serving in the armed forces shall have the right to elect and be elected on equal terms with all citizens.

30. Candidates shall be put forward for election according to electoral districts.

Any one hundred electors residing in an electoral district may sponsor a candidate. No other precondition, whether money security or otherwise, shall be required of a candidate.

31. Every deputy is obliged to render from time to time a report to his constituency regarding his work and the work of

the body to which he was elected; he may at any time be recalled by his constituency in the manner established by law.

32. Polling stations shall be provided in all electoral districts within convenient walking distance. Polling stations shall be provided for all factories employing more than 100 workers.

JUSTICE : THE COURTS AND THE ADVOCATE GENERAL

33. Justice is administered by the High Court of Jammu and Kashmir, and by the District and Tehsil People's Courts.

34. In all courts, cases shall be tried with the participation of the people's Judges with the exception of cases specially provided for by law.

35. The High Court of Jammu and Kashmir is the highest judicial tribunal. It is charged with the supervision and direction of the judicial activity of all organs of the State.

36. The High Court of Jammu and Kashmir is elected by the National Assembly for a period of five years. The lower courts are appointed by the High Court for a period of five years, with the exception of the People's Courts which are elected by the People's Panchayats for a period of five years.

37. Court proceedings in the High Court shall be conducted in the lingua franca of the State, that is Urdu. Proceedings in the lower courts shall be conducted in the local language. Persons not knowing the language of the Court shall be assured the possibility of fully acquainting themselves with the material of the case through an interpreter, as well as having the right to address the Court in their own language.

38. In all cases an accused person is fully ensured the right of defence.

39. In all courts of the State cases are heard openly, except when otherwise provided for by law.

40. Judges shall be independent and subject only to law.

THE ADVOCATE GENERAL AND STATE ADVOCATES

41. The Advocate General of Jammu and Kashmir is appointed by the National Assembly for a period of five years.

State Advocates in Districts and Tehsil are appointed by the Advocate-General of Jammu and Kashmir for a period of five years.

42. The Advocate-General of Jammu and Kashmir is charged with the highest supervision of the strict observance of the laws by all State Ministers and institutions under them, as well as by individual persons holding official posts and also by citizens of the State.

43. The Advocate-General and the State Advocates perform their functions independently of any local organs whatsoever, the latter being subordinate only to the Advocate-General of the State.

44. In case of the retirement of a Judge or the Advocate-General falling at a time when the National Assembly is in a State of dissolution, the date of retirement shall be deemed postponed until the meeting of the fresh National Assembly is able to make a new appointment.

LOCAL ADMINISTRATION

45. The organs of State power in District of the Tehsils, Cities and Villages, shall be the People's Panchayats.

The People's Panchayats direct the activities of the organs of administration subordinate to them, ensure the maintenance of State order observance of laws and the protection of the rights of citizens, direct local, economic and cultural development in fulfilment of the National Plan, organise Civil Defence, and draw up the local budget.

The People's Panchayats adopt decisions and issue orders within the limits of the powers vested in them by law.

The executive and administrative organs of the People's Panchayats are the Executive Committees elected by them, composed of a Chairman, Vice Chairman, Secretary and Members.

The Executive Committee of the People's Panchayats are directly responsible to the People's Panchayats which elected them and are also subject to the Council of Ministers of the States.

47. The People's Panchayats are elected by the people of their area of jurisdiction for a period of five years.

The ratio of representation in the people's Panchayats shall be determined by law.

NATIONAL LANGUAGES

48. The national languages of the State shall be Kashmiri, Dogri, Balti (Pali), Dardi, Punjabi, Hindi and Urdu shall be the lingua franca of the State.

The State shall foster and encourage the growth and development of these languages, especially those which are more backward, by every possible means, including the following:

1. The establishment of a State Languages Academy, where scholars and grammarians shall work to develop the languages,

   (a) by perfecting and providing scripts;
   (b) by enriching them through foreign translations;
   (c) by studying their history;
   (d) by producting dictionaries and texts books.

2. The founding of State scholarship for the study of these languages.
3. The fostering of local Press and publication in local languages.

AMENDMENTS TO THE CONSTITUTION

49. Amendments to this Constitution shall be effected only by a decision of the National Assembly when adopted by the majority of not less than two-thirds of the votes cast therein subject to the ratification of the Ruler.

NATIONAL ECONOMIC PLAN

50. The economic life of the State shall be determined and directed by the National Economic Plan for the purpose of increasing public wealth, of ensuring a steady rise in the material and cultural level of working men and women, and consolidating the defence capacity of the State.

82. Jinnah's address to Muslims of Jammu & Kashmir, July 24, 1944.

(Extract)

As I said at the moment I reached Jammu, it is not the policy of the Muslim League to interfere with the internal administration of this State or the grave and serious issues that face the Maharaja and his Government, as between him and his people, but we are certainly very deeply concerned with the welfare of the Mussalmans in the State, and I must say that even a casual visitor cannot but be shocked to see the condition of the people in this State, even in matters of their elementary needs and necessities. Sir B.N. Rao has just taken charge as the Prime Minister of the State, and now the people are looking up to him and expecting that he will take effective measures for their betterment.

As regards the Mussalmans, as I said, we are vitally concerned with their welfare, but I regret that although Sheikh Abdullah and his party and the Muslim Conference discussed matters with me in Delhi and in Lahore before my arrival here, and were good enough to accord me a great reception, and were anxious that I should hear both sides and bring about a settlement, when I, after careful consideration, suggested that the Mussalmans should organize themselves under one flag and on one platform, not only my advice was not acceptable to Sheikh Abdullah but, as is his habit, which has become a second nature with him, he indulged in all sorts of language of a most offensive and vituperative character in attacking me. My advice to the Mussalmans is that the differences can only be resolved by argument, discussion, exchange of views, and reason, and not by goondaism and one thing that I must draw the attention of Kashmir Government about is that goondaism must be put down at any cost, and there should be constitutional liberty of speech and freedom of thought, which is the elementary right of every citizen under any civilized form of Government.

83. Resolution of the Working Committee of the Indian National Congress on United India and Self-Determination, 12-18 and 21-24 September 1945.

As some misapprehensions have arisen in regard to certain resolutions of the All-India Congress Committee and of the Working Committee passed in 1942 relating to the future Constitution of India, the Working Committee restates the position as follows:

In accordance with the August 1942 resolution of the All-India National Congress Committee it will be for a democratically elected Constituent Assembly to prepare a Constitution for the Government of India, acceptable to all sections of the people. This Constitution, according to the Congress view, should be a federal one, with the residuary powers vesting in the units. The fundamental rights as laid down by the Karachi Congress and subsequently added to, must form an integral part of this Constitution. Further, as declared by the All-India Congress Committee at its meeting held in Allahabad in May 1942, the Congress cannot agree to any proposal to disintegrate India by giving liberty to any component State or territorial Unit to secede from the Indian Union or Federation. The Congress, as the Working Committee declared in April 1942, has been wedded to Indian freedom and unity and any break in that unity, especially in the modern world when people's minds inevitably think in terms of ever larger federations, should be injurious to all concerned and exceedingly painful to contemplate. Nevertheless, the Committee also declared, it can not think in terms of compelling the people in any territorial unit to remain in an Indian Union against their declared and established will. While recognizing this principle, every effort should be made to create conditions which would help the different Units in developing a common and co-operative national life. The acceptance of the principle inevitably involves that no changes should be made which result in fresh problems being created and compulsion being exercised on other substantial groups within that area. Each territorial Unit should have the fullest possible autonomy within the Union, consistently with a strong national state.

84 .Resolution of the working Committee of National Conference, February 10, 1946.

The working Committee of the Jammu and Kashmir National Conference have taken into consideration the speech made by the Vicerory of India in the Princes' Chamber on the 17th January, 1946 along with the declaration made by the Chancellor of the Chamber on behalf of the Princes regarding constitutional advancement in the States. After fully examining the salient points in both the speeches, the Working Committee have come to the following conclusions:

1. That the advice tendered by the Crown Representative to the Princes regarding the steps to be taken in making the administration of these States progressive did not amount to anything progressive. In fact it lost all its significance when he (Viceroy), made such progress conditional on the maintenance of the treaties and the consent of the Princes. These treaties and engagements which are outdated, reactionary and questionable have always stood and will always stand in the way of the States People's progress and to think that the Rulers will give up their privileged positions that they enjoy under them at their sweet will is nothing but wishful thinking. The National Conference has at several occasions made it clear that these treaties have been made in times and under circumstances which do not obtain now and have been framed without seeking the consent of the States people. Under such circumstances no treaties or engagements which act as a dividing wall between their progress and that of their brethren in British India, can be binding on the people.

85. Telegram from Sheikh Mohammad Abdullah to Cabinet Mission, 1946.

"As President, All-Jammu and Kashmir National Conference representing all communities and classes of people inhabiting Jammu and Kashmir State I welcome your visit to our state and hope that it will usher in new era of freedom both

political and economic for four million state people. As Mission is at moment reviewing relationship of Princes with the Paramount Power with reference to treaty rights we wish to submit that for us in Kashmir re-examination of this relationship is vital matter because hundred years ago in 1846 land and people of Kashmir were sold away to servitude of Dogra House by British for seventy-five lacs of sikh rupees equivalent to fifty lakhs British Indian rupees. Then Governor of Kashmir resisted transfer, but was finally reduced to subjection with aid of British. Thus sale deed of 1846 misnamed treaty of Amritsar sealed fate of Kashmir masses. We declare to world that this sale deed confers no privileges equivalent to those claimed by states governed by treaty rights. As such case of Kashmir stands on unique footing and people of Kashmir press on Mission their unchallengeable claims to freedom on withdrawal of British power from India. We wish to declare that no sale deed however sacrosanct can condemn more than four million men and women to servitude of an autocrat when will to live under this rule is no longer there. People of Kashmir are determined to mould their own destiny and we appeal to Mission to recognise justice and strength of our cause."

86. Dyarchy Appointment of Popular Ministers.

"With a view to giving further effect to my policy of associating my subjects with the administration of the State, I have after careful consideration decided to call upon the Praja Sabha to nominate panel of six (three to be Muslims) of its members, three from Jammu (including the Frontier Districts). Out of the panel so nominated I shall appoint two (one of whom will be a Muslim) as my Ministers. These Ministers shall hold charge of portfolios to be determined by me and will hold office during my pleasure."

87, Dyarchy Mirza Afzal Beg to Rai Bahadur Ramchander Kak, Prime Minister, Jammu. Letter No. 11-P/46/D.O. dated 15.1.46

My dear Prime Minister,

Ever since assumption of office, I have been facing certain tremendous difficulties in the discharge of my duties which from time to time I have brought to your notice and also to the notice of your predecessor, both in writing and verbally. These difficulties are to my mind in their nature serious enough to call for immediate solution, not only with a view to afford opportunities of efficient working but also to achieve the object underlying His Highness' October Proclamation of 1944, in pursuance of which the two popular Ministers were appointed. But as ill-luck would have it, they have not only been not removed so far but in most cases no serious attempt has to my knowledge, been made uptil now towards their solution. The result is obvious.

Under these circumstances I feel constrained once more to re-state them here and strongly request the immediate solution and removal of these difficulties:

1. You remember that just before the commencement of the Srinagar session of the Praja Sabha, I, in the course of a discussion pointed out to you that according to the decision of your Hon'ble predecessor in Office, the elected Ministers had freedom of speech on the floor of the House, which they could exercise even if they disagreed with the 'official' view of the Government on any issue. (This position is in strict accordance with the provisions of the present consitution). But your reply was that elected Ministers should not only speak but also vote in support of the official view and that they could not even remain neutral in case of difference of opinion. I urged that this was not only the repudiation of the previous arrangement but was also repugnant to the express provisions of the consittution, as amended by His Highness the Maharaja Bahadur after the appointment of Popular Ministers. According to this amendment the two Ministers are to retain their status as members of the Praja Sabha which they occupied before appointment as Minister. Needless to say that the status of these two Ministers before such appointment was that of elected

members who had complete right of vote and freedom of speech on the floor of House. Obviously therefore, any restriction of that right is repugnant of the constitution.

You, however, did not seem agreeable to modify your view and nor was I inclined to accept your. The actual position, however, during the last Session in the Assembly did not result in any serious difference of opinion on any important issue before the legislature, but the position is liquid and demands immediate final settlement. I maintain that the amended constitution gives effect to the spirit and policy underlying no departure there from can be made.

I would further add that any attempt to restrict the right of vote and speech of the two elected Ministers is bound to lead to non-confidence in them by their electorate, and is fur-their fraught with the possibilities of coming into conflict with the declared policy of associating the subjects of His Highness with the administration of the State.

2. Soon after my assumption of office anomalous position with respect to P.W.M. came to light. Whereas every other Minister of the Government has a Secretariat of his own over which he exercises complete administrative control, such is not the case with the P.W.M. He has no Secretariat attached to him or responsible to him. At present he works through the Home, Revenue and Development Secretariates, none of which is affiliated to him. He hoped that after his appointment by His Highness the consequental changes would be effected by the Government but as things turned out no action was taken. After a thorough discussion with your Hon'ble predecessor-in-office, who realised the difficulties and recognised the need of a separate secretariat in the case of P.W.M., the latter sent in a memorandum on 28.12.1944. Prompted by the desire, which he was confident, that his other Hon'ble colleagues shared with him, of making the experiment so graciously introduced by our benign Ruler of associating his subjects with the governance of the State successful, the P.W.M requested that any possible difficulties in the direction should be forthwith removed. But unfortunately the proposal made no headway until Sir B.N. the former Prime Minister, relinquished office.

After assumption of office by you the matter was brought to your notice in verbal discussion and ultimately a written

request was made under my No. 215/P/45 dated 21st August, 1945, in which the original proposal for creating a small Secretariat was repeated. Inspite of repeated requests, made verbally to you, no tangible result has followed. On 13th December, 1945, during a personal discussion on the issue you expressed your readiness to make a sort of adjustment by bifurcating the Home Secretariat in two branches-each under H.H.M. & P.W.M. But even this halfway measure, though falling for short of my original request, has not fructified.

I pointed out to you the present anomalies of the Secretariats who have to deal either exclusively or mainly with the work under the Public Works portfolio, have absolutely nothing to do so far as administrative control is concerned with the P.W.M. So much so that questions of their leave, promotion, record of their service book and confidential rolls are the exclusive concern of other Ministers with whom they may have to do nothing whatsoever. Such is the present position which to my mind is both anomalous and unsatisfactory.

I need hardly add that experience has convinced me that nothing short of my original proposal can remove the present tremendous difficulties as well as do away with the discriminatory position between the P.W.M. and his other Hon'ble colleagues. The delay to take decision during the last 13 months has done considerable damage and is sure to do more.

3. You know the fate of Municipal Bill that I proposed in March 1945. K.B. Mirza Jafar Ali Khan, the then officiating Prime Minister, did not take it up as he thought that it involved an important issue. I expressed my disagreement with him, but I was assured that the matter would be further considered and definite conclusions arrived at shortly. I waited from some time but when I saw that the case did not make any headway I pressed it again. The result was that inspite of the urgeney expressed by me, the question was referred to the Adhoc Committee consisting of H.H.M., H.D.M and P.W.M.

Meanwhile feeling that there was too much centralisation in the present Act and the Minister-in-Charge who is supposed to be responsible for the municipal administration is practically without powers. I suggested certain delegation under the Act to the Minister vide my memorandum for

submission to Council No. 859-M/45 dated 22.9. 1945. These powers are now vested in the Government, though to my mind they are of too petty importance. It will be well worth while to mention some of them here:

S. 13.	Acceptance of resignation by a member of a Commttee
S. 14.	Notification of election and appointment of members
S. 29.	Directions to a Committee to make bye-laws
S. 31.	Sanctioning of delegation of powers to Municipal Servant
S. 38 (2) :	Power to hear appeal from a member held responsible for loss or waste of money
S. 40 (1) (d)	Power to sanction an expenditure to be an appropriate charge on the recommendation of the Committee
S. 63 (b)	Power to hear appeals against notices of demand
S. 66.	Power to hear appeal against levy of tax
S. 69.	Power to prescribe conditions for regulating offensive trades
S. 91.	Power to prohibit use of a place for an offensive trade
S. 155.	Power to require a Committee to make bye-laws for regulating articles of food drink
S. 174.	Power to hear appeals against the orders of a Committee or its officers

Mere perusal of these matters which have now to go to Council for sanction should convince any body that such a centralization is bound seriously to hamper progress and efficiency of work. The Minister is not even competent to accept a resignation, or notify an election or an appointment of a member. He cannot direct the Municipility to make certain bye-laws respect to general sanitation etc. He is powerless even in matters of hearing appeals against petty questions disposed of by Committee. It may incidentally be mentioned that functions like these are discharged in British India by

officers of lower status than a Minister. Here they are centralised in the Government though they generally pertain day to day administration of the Committees.

As some of these powers were in actual practice exercised by my Predecessor-in-office I also asked for validation of that practice.

This proposal also has met the same fate. Not only that decision has been taken but it was not even put before Council. I was recently extremenly surprised to find that nearly 161 cases of varying importance were taken up and mostly disposed of by Council, but this proposal though considered by the Minister-in-Charge as very urgent did not find place in that agenda. On October 13, 1945-vide my D.O. No. 859-18/45 of 13.10.1945. I drew your attention to my previous proposal on the point again and requested for immediate action. But even this did not produce any result. It is now nearly 4 months that the matter has been hanging fire, meanwhile the work is practically held up.

4. I also referred to other matters during my discussions with you as well as your predecessor. These are of tremendous public importance for which I have always felt that the elected Ministers should be consulted. Take for example the questions relating to law and order. Practically the whole of Kashmir is ruled by ordinance; at present Rule 50 of the Jammu and Kashmir. Defence Rules is in force banning all public processions and meetings. This is so even in my own constituency which I am legally and constitutionally bound to represent in all matters. Never before or after the promulgation of Defence Rule in question has the matter been discussed with the representative in Council. Nor even a courtesy reference was made to me whose whole constituency is under an ordinace at present. This is a serious position, which, as public represantative whose status as such has been maintained in the constitution referred to above, by the August Ruler-I have to take notice of. You can well imagine the lot of an elected member whose constituency in matters of civic rights, is dealt with like this and who has no voice in these matters. The public at large consider him in their ignorance of the actual working, a party to such decisions.

Whereas he himself is kept in complete ignorance from start

to finish. The public representative in these cases comes to know of what has happened through press only. This position is extremely difficult and embarrassing. If it is intended that the elected Ministers should continue to represent the people, it exposes them to the unmerited public criticism on Government measures with which they themselves may disagree.

Same is the position about the distribution of controlled commodities which has assumed enormous importance during recent years. From time to time I have addressed various Communication and mde a number of references to this during discussions, but generally speaking without result.

on the whole the matters referred to above are of tremendous importance and I feel convinced in my mind that if immediate decisions on the lines indicated are not taken, the real value of having elected Ministers will be considerably reduced if it would not totally disappear. That would be against the intentions and policy of our beloved Ruler, which every one of us must guard against. And most unfortunately-it is painful to reiterate- this position has been allowed to persist for more than a year and the sooner, therefore, it is rectified the better.

Yours sincerely
Sd/- M.A. Beg

The Hon'ble
Rai Bahadur Pt. Ramchandra Kak,
Prime Minister,
Jammu.

88. Rai Bahadur Pt. R.C. Kak, Prime Minister Jammu & Kashmir State to Mirza Afzal Beg.

Letter No. 16-CC/46 D.O. Dated 12.2.46.

My dear Mr. Beg,

I write to acknowledge receipt of your demi-official letter No. 11-P/46, dated 15th January 1946. The various matters you have raised are dealt with in the following paragraphs which, I might mention, embody the views I have expressed to you from time to time in regard to these matters.

1. Right to Vote in the Assembly. If a Minister has the right to express and urge his point of view in the Council but if the decision of the majority goes against him it naturally follows that he will accept and endorse the policy of the Government of which he is a member. The amendment to situation the Constitution Act quoted by you was made, as you know, with the sole object of meeting the situation arising out of the ruling given by the President, Praja Sabha, to the effect that by virtue of your and Wazir Gangaram's appointment as Ministers the elected seats in the Assembly held by you had become vacated. The amendment preserved your status as non official members of the Praja Sabha, but has no relation whatever to the question of Ministers voting in the Sabha. Sir B.N. Rau's opinion was that you and Wazir Gangaram should be debarred from voting, but that opinion had no sanction behind it, and in practice would involve serious difficulties. I am authorised to inform you that there was no question at any time of the Ministers appointed by His Highness from amongst the members of the Praja Sabha being given the option to vote in the Praja Sabha independently of the decision of the Government and no such meaning can be read either into His Highness's Message to the Praja Sabha dated 2nd October, 1944, or into the amendment to Constitution Act referred to by you.

2. With regard to the question of Secretariat as you are aware, for the last several years, the Secretariats have been of a composite character and each Minister has to deal with several Secretaries and Secretariats. So long as the, number of Ministers coincided with that of Secretaries, though an anomalous one, could continue without much difficulty, but with the increase in the number of Ministers its inherent defects became immediately noticeable. When you mentioned the matter to me, I explained how undesirable it would be to create and retrench Secretariats as circumstances necessitated increase or decrease in the number of Ministers, I added that in British Indian Provinces and in certain Indian States, Secretariats remained constant while the number of the Ministers, varied as circumstances demanded. When the Secretariats were reorganised in 1939 and the posts of Secretaries were made tenure appointments, the allocation of departments among the

Secretariats no longer continued to be identical with the portfolios the Ministers who controlled them. In the circumstances the logical course would have been to combine the Secretariats for purposes of administration though they might continue to function under the Ministers in respect of the preformance of their appointed duties. I however offered, as a purely temporary measure, to place under you the Public Works Secretariat with either the Secretary or the Assistant Secretary. You preferred the Secretary for all purposes in the same manner as other Secretariats where under other Ministers. You accepted the suggestion but pressed that the establishment in other Secretariats dealing with the departments under you should also be transferred to this Secretariat. This however, would have meant going back to the system which had been discarded in 1939 after detailed consideration, and it was therefore, impracticable when the order was drafted, to implement the suggestion made by me. The Chief Secretary informed me that he understood that the arrangement would not be acceptable to you. The only solution, therefore, was the logical one, namely that of placing all Secretariats for purposes of administration under one authority. A proposal was accordingly submitted to Council and received the support of the other Ministers. Orders have since been passed and your position is exactly that of your colleagues with reference to the Secretariat. Moreover you have a Personal Assistant which the other three Ministers have not.

3. Delegation of powers under the Municipal Act. The reason why this case has not been put up to the Council is that the Law Department has not accepted your view that powers can be delegated to you as proposed, under the existing provisions of the Act. I have, however, asked the Chief Secretary to submit the case to Council where your proposal and the objection of the Law Department can be discussed. In any case it appears to me, there should be no difficulty in disposing of these cases in accordance with the existing provisions of the Municipal Act even if it is assumed, as you assume, that your predecessor exercised powers which he was not entitled to exercise under the law. It is conceivable that these provisions lay down a procedure entailing unnecessary work on the Council, but that cannot be a sufficient reason for

holding up disposal. As a matter of fact, when in Srinagar you spoke to me on this subject you remarked that you would be compelled to send the cases to Council, I replied that it was open to you to do so. As there is an Ad Hoc Committee considering further amendments to the Municipal Act, may I suggest that this Committee might consider any amendments in regard to the sections referred to in your letter, should the Council find on consideration, that the Law Department's objection to your proposal is insuperable.

4. Enforcement of Rule 50 in certain parts of the State: Magistrates and Police Officers exercise powers which are vested in them by statute, rule or orders of Government. The purpose for which they are armed with these powers is that they should be able to discharge their primary responsibility, viz. ensuring the maintenance of law and order and preventing breaches of peace, without being obliged in each case and on each occasion to ask for instructions. In this behalf there is no difference in law and practice as between this state and anywhere else. So far as the question of securing information with regard to happenings in the State is concerned, you get information like other Ministers, since like them you are supplied with police diaries every day. In addition, whenever you have sought for information or explanation from me, I have readily furnished it to you to the best of my knowledge. It is not possible to lay down that the Magistrates and the Police must refrain from taking action in the discharge of their responsibility without previous approval of higher authorities. In fact, though, Law and Order is within my individual sphere of responsibility, even I often receive information only after action has been taken by the Magistrates and the police.

So far as the enforcement of emergency laws is concerned discretion to enforce them rests with the Distrtct Magistrates. It is only when they find that the ordinary processes of law are inadequate to deal with the actual outbreak of disorder in a particular place, that they have recourse to emergency measures. This applies to your Constituency as to other places, and this State is not unique in the application of such measures in given circumstances. Even where such laws are in force, meetings can be held and have been held in some you yourself have participated and processions taken out with the permssion

of the competent Magistrate, who when considering request for such permission has to satisfy himself that there will be no breach of the peace if the permission asked for is granted.

5. Distribuction of controlled commodities....You have made passing reference to the question of the distri bution of controlled commodities. There have been and I dare say may still be shortcomings in distribution but things have improved considerably in recent months. Any suggestions received from any quarter regarding improvement of control arrangements have been practicable. Any suggestion you might make which is generally acceptable and will work in practice will have my full support.

6. You have referred to his Highness massage to the Praja Sabha dated 2nd October, 1944. It must be the endeavour of all of us to ensure that the intention underlying the message should attain fulfilment. To achieve this object we have all to work together and it is hardly necessary for me to add that the measure of our success will be in proportion to the spirit of goodwill and accommodation we bring to the common task.

Yours sincerely,
Sd/- R. C. Kak.

The Hon'ble Mirza M.A.Beg,
Public Works Minister,
Jammu.

89. Mirza Afzal Beg, Minister for Public Works teo Rai Bahadur Pt. R.C. Kak, Prime Minister, Jammu and Kashmir State, February. 23, 1946

My dear Kak Sahib,

I write to acknowledge with thanks the receipt of your D.O. letter No. 16-CC/46 dated 12th February, 1946.

I find some new points have been raised in the D.O. and

therefore it is necessary once again to clarify the position in the hope that it would be fully appreciated.

1. To begin with, I draw your attention to the matter touched in the last paragraph of your letter under reply, wherein His Highness' message of the Praja Sabha dated 2nd October 1944 has been referred to. I have throughout made it clear that the view I take is strictly in accordance His Highness' Proclamation and in pressing various matters from time to time I have been prompted only by the desire to make the present experiment a complete success. I need hardly say that in actual practice also, I have done my utmost in that direction.

The intention underlying the Proclamation is the effective association of His Highness' subjects in the Government of the State. The direction in the Proclamation that official block in the Assembly was not to participate in the proceedings relating to selection of members to the panel, clearly indicated that offlcials should not influence the decision of the Assembly. This ensured that the representatives of the people - according to the Assembly - should largely determine the appointment of Ministers. Thus to the advice of Ministers so selected considerable weight attaches in matters of public importance and to my mind this cannot be lost sight of in the disposal of questions pertaining to the administration. An earnest attempt to accomodate their view point should be forthcoming and it cannot be brushed aside totally simply because majority take a different view on any issue before the Council. The position taken that "if the decision of the majority in the Council goes against the member, he has to accept and endorse the policy of Government", I am afraid, does not strictly stand.

In the appointment of Ministers of Council, as at present constituted, His Highness has adopted two different and distinct methods. Where in the case of popular Ministers they are elected in the prescribed manner and are eligible for re-appointment only if they remain members of the Praja Sabha, such is not the case with other Ministers. That is His Highness' Command. While implementing it, earnest effort should be made by us all to avoid possibilities which will land the elected Minisfers in embarrassments and positions of no-confidence by

public. Whoever is appointed as a popular Minister under the present system must according to the spirit of the Proclamation retain public confidence which can be only retained if the popular view point as expressed by such Ministers is given due weight to. On the contrary, if the decisions of the Council are to be taken by actual voting, the Popular Ministers surely will find themselves in minority in the Council, even if they always vote together. In such a contingency these Ministers have to bear the brunt of public criticism, which the other Ministers can offered to ignore. Should such an issue be an important one, may I ask how these Ministers can continue to enjoy public confidence, especially when you expect them not to express even their individual opinion by means of vote on the floor of the Praja Sabha. There have been occasions on which I differed from the view taken by my other colleagues in Council and if I am not even allowed by the Government to vote in favour of that view I feel that it is not only suppression of opinion but will also lead to consequences directly in conflict with the spirit of the Royal Proclamation.

Whereas I concede that it should be an earnest effort at unanimous decision-and I have always acted in that spirit-yet a contingency may arise where on an issue of very grave public importance a Popular Minister may honestly differ. That Government should expect him in such a contingency to vote with it would, I am afraid, be too much.

2. In my note dated 30th January 1945 which I recorded on the case relating the amendments of constitution, I made my view quite clear. I then said:

> "It is however, hoped that the Popular Ministers will be able to influence the policy of administration in accordance with the views of people for otherwise these Ministers would lose their popular confidence and support-may be, sometimes not by reason of any action on their part but as a result of the measure taken by the Government. Again such loss of popular confidence is apt to bear an adverse effect on the ability of the Ministers to render their best service. In that case not much would be gained by selecting Ministers from the Legislature. Such a state of affairs, I very much fear, will not be in accordance with spirit of

the proclamation."

"The Constitution Act was subsequently amended and though it referred to the retention of status of the elected Ministers in the Praja Sabha, it also amended the provisions of Section 28 of the Constitution Act. Obviously, therefore, the amendment was not aimed at only preserving our "status as non-official members of the Praja Sabha".....

Even in relation to the preservation of such "status" the question arises as to what that status is. To my mind the status of an elected member of legislature is, in actual practice determined by his ability to represent his constituents and hence by his freedom to voice their feelings (and according to you also the amended Constitution Act retains our representative character). Otherwise if he is retained as elected member of Praja Sabha for keeping the elected seats occupied and compelling him to vote and speak for the Government view point, I am afraid such a position does serious damage to that status. Such a position not only raises the question of coming in to conflict with the Proclamation, as I have said before, but also a more embarrassing question of the general constitutional right recognized by our Constitution Act of 1996.

You have referred to Sir B. N.'s opinion according to which the two elected Ministers were 'debarred from voting; But according to what you propose this 'disqualification' is intended to be removed only to compel us to vote in support of the official view of the Government, even though we may disagree with it and might have expressed our disagreement even in the Council too.

In the concluding sentence of the first paragraph of your letter you say there was no question of the Ministers appointed from amongst the members of the Praja Sabha being given the option to vote independently of the decision of the government. According to the implication of the words underlined the elected Ministers can be given an option of vote by the Government. As convention can, therefore, be set up by the Government itself for such option in matters where agreement in Conncil canot be reached.

You have not in your letter under reply referred to our freedom of speech on the floor of the House, which in my pre-

vions letter, I said was preserved.

3. It is true that on 21st January, 1946 the Council have taken their decision of combining the various Secretariats into one under the administrative control of the Chief Secretariat, which is attached to the portfolio of Hon'ble Prime Minister. In my discussion with you on 13th December 1945 to which I referred in the second para of my previous D.O. it was agreed, though as a temporary measure, to bifurcate the Home Secretariat, as indicated in your D.O. under reply. After this the Chief Secretary once made a passing mention that you were examining the question of the Secretariats. I said that the temporary arrangements agreed upon with you shall have to be made by an executive order or otherwise, exactly as the other Secretariats are put under Ministers and that in this at least there should be no difference. In my D.O. of 15th January, 1946, I therefore referred to this temporary arrangement again, though I pressed that for the final settlement of the matter, a separate Secretariat was necessary.

The question of transferring the establishment in other Secretariats dealing with departments under me was raised when Hon'ble Home Minister said that he was exercising and should continue to exercise administrative control over similar establishment under him in other Secretariats. I therefore suggested that in the event of bifurcation of the Home Secretariat, as contemplated by you, the position of Public Works Minister should be put on similar footing.

The anamolies that I pointed out about the Secretariat working under the previous system continue even now. For purposes of appointments, transfers, leave etc., they will be under the Chief Secretary whereas in respect of performance of duties they will be working under various Ministers.

You have referred to the personal Assistant under me. May I point out that whereas all Ministers except me have Parliamentary Under Secretaries, I preferred to have a Personal Assistant.

4. So far as the question of delegation of powers under the Municipal Act is concerned you have referred to an objection that Law Department has 'now' taken. I am really surprised to hear this though I feel that I should have been told so earlier especially since I had addressed a D.O. after submi-

sion of the memorandum, requesting that the matter should be expeditiously dealt with.

I am surprised at the Department's objection because before submitting the memorandum No.859-M 45 dated 22nd September 1945, I had obtained the Law Department's opinion on the point at issue and enclosed a draft notification drawn up by the Law Secretary and Advocate General to the Government, proposing delegation of powers under Section 30-A. The Law Secretary asked if there was any objection to the delegation of powers. It is rather strange that after giving his definite opinion that delegation could be made under Municipal Act to the Minister in charge, he should now opine that such delegation is not correct. In this connection copy of his draft notification enclosed with my original memorandum may kindly be perused. The same question was also once before referred to him on 15th July, 1944. The Legal Rememberancer and Advocate General then said, "There is no objection to the delegation being made under Section 30-A of the Municipal Act of 1998". A draft notification was then also vetted and drafted by Law Department and is on the file. It passes my comprehension how today a different view is expressed by the very same officer on the same question. May I tell you that is one of the instances how the method of dealing with my cases, leads to great embarrassment.

I would incidentally like to mention that under Section 417 of Criminal Procedure Code the Government is empowered to direct presentation of appeals against acquittal orders by a Criminal Court. Some section authorises the Government to delegate these powers to any officer. Accordingly power to direct to prefer an appeal against acquittal has been delegated under notification No. 5-P/84 to the Law Minister. There is absolutely no comparison between the powers delegated under this notification to the Law Minister and those which I had requested to be delegated to the Minister-in-Charge Municipalties. In the former case the Law Minister is competent to direct preferment of appeal which may lead to hanging a person, whereas in the latter the Minister-in-Charge, assuming his request for delegation is granted, will only be exercising powers of direction for preparation of bye-laws with regard to sanitation or petty increment and promotion questions etc.

Again powers vested in the Government under Land Revenue Act have been delegated to the Hon'ble Revenue Minister. I am, therefore, really surprised to understand why a different outlook should be brought to bear upon the disposal of the question when in identical circumstances, the delegation is asked for by me as Minister-in-Charge Municipalities.

You have referred to my talk that I had with you on this question in Srinagar. I did say that I shall be 'compelled' to send up the cases to the Council in case the delegation was not granted. May I remind you that this was in reference to your suggestion that the question of hearing municipal appeals may be delegated to a Court which involve amendment of the Act and hence reference to Legislature. Though that would be a unique procedure, as I pointed out then, I did say that I would be compelled to send these cases to Council-I would surely have done that, if either the Law Department had disagreed with me or the Council recorded their decision that delegation cannot be granted. In that case I would really be "compelled" to do it. Unfortunately neither my memorandum was put up to the Council nor my D.O. letter requesting for immediate action in the matter was replied to.

After carefully reading paragraph No. 3 of your letter I feel it is indicated that these cases should be sent to Council for disposal. I am, therefore, issuing orders to the Secretary accordingly.

The Adhoc Committee referred to in paragraph 3 of your letter has since sent up its report. I would like to point out that under previous Council decision that Committee could examine only the clauses of the Bill referred to it and the question of examining the delegation would be outside its purview, unless it is intended that the Committee should launch upon that investigation now.

5. So far as promulgation of Defence Rules in concerned from purely technical point of view the position explained by you in paragraph four of your D. O. may be correct and it may really be difficult in cases of grave emergency for competent Magistrates to seek instructions before the event. But the position has also to be viewed from other technical stand point. Failure of ordinary processes of law and recourse to rule by ordinances is always an abnormal position and the more re-

course is had to the application of ordinances, the greater and heavier is the responsibility of those charged with the duty of maintenance of law and order. In such circumstances, therefore no, Government can excuse itself by merely saying that grave apprehension of breach of peace necessitated recourse to Ordinance without minutely going into the merits of every case, after promulgation.

Promulgation of Rule 50 in vast areas and for number of months at a stretch and sometimes for indefinite periods is an extraordinarily grave position. But I doubt very much if in any case any enquiry has ever been held whether recourse to Ordinance was justified both in its extension of time and space. This attitude, to my knowledge, continued in the face of unanimous protests both from press and public organizations and no attempt was made to look into the question. I am afraid though law and order, as you say, is your individual responsibility, the Government as a whole has to face this position. Though Popular Ministers were always available for consultation their views were not obtained even after the promulgation of ordinances. People in distant villages who under the abnormal conditions created by war were facing acute hardships could not express themselves in public meetings as the same were banned.

Though in places near the District Magistrates headquarters permission to hold meetings could be easily requested for but this was well-nigh impossible in the case of far off places which had to suffer, even though in those areas no apprehension of breach of peace actually existed.

Issues arising out of such situation often form subject of serious protests in the Praja Sabha where you expect me to vote with you, it was, therefore, all the more important that if due to emergency previous consultation was impossible, careful examination of the whole situation by Council or at least with the Popular Ministers after the promulgation of Ordinances should have been held in each case. This would have not only helped us in satisfying ourselves that the real emergency existed and the powers were used to the minimum extent necessary, but the embarrassing position that we have certainly to face on the floor of the House would also have been totally avoided. Such an examination was also necessary

in every case, because failure of ordinary processess of law to meet a given situation is always an abnormal position, about the merits of which the Government must satisfy itself completely. On the contrary, matters have been allowed to drift to the extent that I was once completely surprised that even the District Magistrate of Kashmir did not know whether restrictions under Rule 50 applied in a particular locality. I am referring to the case of Bijbehara which presumably I mentioned to you last year. I dare say we cannot congratulate ourselves on such a state of affairs. It is true that it means more embarrassment for an elected Minister who has to be more responsive to the public opinion, but for the Government as a whole also such a position should be unwelcome as it brings it into disrepute, which is avoidable.

May I here make mention of the recent sad happenings in Jammu. Even here the Government will be well advised to hold a sifting enquiry into the whole position with a view to find out why those charged with the duty of maintaining law and order first failed by ordinary means and when extraordinary means were had recourse to, if no abuses were committed.

6. So far as distribution of controlled commodities is concerned I am fully conscious of the hard time that we have had to pass through on account of war and I have left no stone unturned in bringing home to the minds of people as far as I could, the necessity of their cooperation in this respect. But nevertheless the fact remains that I addressed in this behalf a number of communication from time to time but even I often failed to evoke a sympathetic response in this behalf.

I have only to reiterate that the new reform introduced by His Highness and his Proclamation of 1944 necessitate a reorientation of out-look to be brought to bear upon the administration of the State.

I would request for an immediate reply so that in the light thereof I may be able to see how far I can render my services towards the implementation of the spirit of the Proclamation as

explained above.

Yours sincerely
Sd/-(M.A. Beg.)

The Hon'ble,
Pt. Rai Bahadur Ram Chandra Kak,
Prime Minister,
JAMMU.

90 Rai Bahadur Pt. R.C. Kak, Prime Minister, Jammu & Kashmir to Mirza Afzal Beg, Minsiter for Public Works. Letter No. 25-CC/D.O. dated 14tn March, 1946

My dear Mr. Beg,

I write to acknowledge receipt of your demi official letter No. 32-P/46 dated the 23rd February 1946, and to say that I have carefully perused it. I find that in substance it is practically a reiteration of what you had stated in your previous letter to which I have already sent a reply. I shall, therefore, deal with it as briefly as possible,

2. With regard to the question of voting and this applies also to speaking- it is not possible to allow an individual member of the Government to act in a manner which is at variance with the policy of the Government. No Government can satisfactortily be carried on this basis. The position that may arise in case such freedom of action is recognised has only to be stated to demonstrate how untenable it is. For example, if your suggestion were accepted, five members of the Government would on occasicn be divided into three units each pulling in a different direction. This you will surely agree would be a ludicruous and anamalous position which would be fatal to the success of the experiment initiated by His Highness. Every Minister can of course (as both you and Wazir Gangaram have done repeatedly) advocate and influence policies within the Council.

So far as the interpretation of His Highness's Message is concerned, I report, what I stated previously, that I am authorised to inform you that it was not the intention of the Message (and ipso facto of the consequential amendment to

the Constitution Act) that Ministers appointed in purpsuance thereto should have the choice of independent voting and speaking.

2. As regards the Secretariat no further remarks are necessary as the matter was fully considered in the Council in your presence and action taken in accordance with their decision which was confirmed by His Highness. Your position is exactly that of other Ministers in relation to the Secretariat.

. Incidentally I may mention that the parallel you have drawn between your Personal Assistant and the Parliamentary Under Secretaries does not hold good as-the latter function only during the Session of the Praja Sabha and in regard only to matters pertaining to the Praja Sabha, whereas your Personal Assistant is a wholetime officer who is always at your disposal. In any case, should you desire it, I am prepared to place my Parliamentary Under Secretary at your disposal for the work which Parliamentary Under Secretaries usually perform.

3. With regard to the delegation of powers under the Municipal Act, it is correct that the Law Department gave an opinion which they modified later. The Law Secretary tells me that modification was due to further consideration on a reference from the then Chief Secretary. In any case I have already told you that the matter will be put up to the Council for decision.

4. As regards the application of Rule 50 and other Emergency Powers, you have agreed that what said in regard to the exercise of these powers by the Magistracy and the Police is "technically" correct. But you suggest that subsequently investigation should be made to ascertain whether the exercise of such powers was necessary in the circumstances. Naturally where it is felt that Emergency Powers have been wrongly applied by the Magistrates, Government will take such action as circumstances may warrant, but it is obvious that any interference by the Government with the discretion of the Magistrates in the discharge of their duties in regard to the maintenance of law and order will entail grave consequences, as I have already pointed out to you, and must therefore be avoided as far as possible.

5. As regards distribution of controlled commodities, this

matter is fraught with difficulties which are not peculiar to this State. I repeat that any suggestion placed before me, which will meet with general acceptance and work in practice, will have my support.

6. I trust that I have made the whole position clear to you. I should like to add that you were selected in consideration of support which members of the Sabha, majority of them widely differing from the policies favoured by your group, gave you. It was and is His Highness's hope and aim-and this was generally recognised by the members of Sabha and by the large number of members outside your group who supported you that the Ministers selected from amongst the members of the Praja-Sabha act in the common interest of all; and by influencing the decision of the Government on the one hand and by explaining to the people the aims and objects of the policies of the Government the difficulties confronting it on the other, promote an "entente cordiale" which would benefit the State as whole, I sincerely trust that this hope will be fulfilled.

Yours sincerely,
Sd/-(R.C. Kak)

91. Mirza Afzal Beg, Minister for Public Works to R.C. Kak, Prime Minister, Jammu and Kashmir.

My dear Prime Minister,

Kindly refer our correspondence ending with your D.O. No. 25-CC/D.O. dated 14th March, 1946.

After having care fully considered the position, I feel there is no alternative left to me except that of tendering resignation from the office of the Ministership which I hereby submit.

I would therefore request that I may be relieved immsdiately.

Yours sincerely,
Sd/- (M.A. Beg)

Jammu
17.3.46
The Hon'ble
Pt. Rai Bahadur Ram Chandra Kak,
Prime Minister, Jammu.

92. R.C. Kak, Prime Minister, Jammu and Kashmir to Mirza Afzal Beg, Minister for Public Works.

March 17, 1946

Letter No. nil Dated : 17th March, 1946

My dear Mr. Beg,

Will you please refer to your letter of date, just received (7.45 P.M.) intimating your desire to resign your office as a Minister in His Highness Govt.

2. I am submitting the letter to His Highness tomorrow morning and will communicate to you his commands as soon as they are received.

Yours sincerely,
Sd/-(R.C. Kak)

The Hon'ble
Mirza M.A. Beg,
Public Works Minister,
Jammu.

93. Mirza Afzal Beg, Minister for Public Works to R.C. Kak, Prime Minister, Jammu and Kashmir.

Jammu
18th March, 1946
Letter No. nil dated 18th March, 1946

My dear Prime Minisrer,

Kindly refer to your demi-official letter dated 17th March, 1946.

As constitutional difficulties are bound to arise any time during the Assembly session, I shall feel grateful if I am relieved of the office of Ministership immediately.

Yours sincerely,
sd/- (M.A. Beg)

Jammu
17.3.46.
The Hon'ble
Pt. Rai Bahadur Ram Chandra Kak,
Prime Minister, Jammu

94. R.C. Kak, Prime Minister, Jammu and Kashmir to Mirza Afzal Beg, Minister for Public Works.

No. 31-CC/D.O.

Jammu
19th March, 1946

My dear Mr. Beg.

Will you please refer to your letter dated 18th March 1946 and to the conversation you had with me on the subject when you expressed your inability to wait the receipt of His Highness commands on your letter of resignation and asked to be relieved at once. In these circumstances I am requesting Mr. Mekhri

to relieve you.

Yours sincerely,
Sd/- (R.C. Kak)

The Hon'ble
Mirza Mohd Afzal Beg,
Public Works Minister,
Jammu.

95. Dyarchy Statement of Sheikh Mohammad Abdullah.

The proclamation of October, 1944 by which His Highness had indicated his willingness to associate non-official members of the legislature with the task of administration through the parties in the legislature sending their nominees into the Cabinet, two in number, was naturally welcomed by the National Conference. Even though the transference of responsibility was partial it at least was an opportunity for us to come forward and assist in steering the boat of the State at a time, when the lives of our people were storm-tossed through the distressing problems of hunger, poverty and slavery.

For the last eighteen months we gave a trial with patient presistence and have looked upon the functioning of the experiments from all angles, till we are finally force to the conclusion that no good can come out of sharing responsibility in the cabinet in which the irreponsible elements dominate decisions and policy. The popular Ministers Mirza Mohammad Afzal Beg, had to face unfair administrative, non co-operative indifference of the old type Cabinet members, and found himself fettered by intolerable bureaucratic red-tapist restrictions even in the functioning of their own departments. Besides all this, a debate on a constitutional issue which had remained a moot point between him and the Prime Minister crystallised the situation. Hence our considered decision that he should resign.

To start with, every unfair attitude was shown in the allocation of portfolios. The nominee of the National Conference was

given the Departments of P.W.D. and Municipalities leaving out control on the panchayats. He was given charge of Stationery and Printing and charge of the State property in British India. The allocation of these portfolios to the nominee of the people's biggest representative organisation seems to be a huge joke. Successive Prime Ministers admitted the unreasonableness of such an allocation and had promised to reshuffle. But nothing happened. Mirza Mohammad Afzal Beg's exclusion from the administering of vital departments directly linking him with the people was not a mere accident, but now I could say with emphasis, was part of a deliberate line of action which unfolded itself as time went on. Could it ever be imagined that a Minister could function efficiently and effectively without any Secretariat at his disposal directly responsible to him ? This is exactly what happened. Further measures of far reaching importance to the civic life of the people in the form of the Municipal Act were proposed by our Minister. These were intended to democratise the Municipal machine. These measures have remained in cold storage.

In administering law and order, restrictive ordinances hitting the basic civil liberties of the people had been promulgated without Mirza Mohammad Afzal Beg knowing anything about them. The measures were adopted in the constituency which the Minister himself was representing and he himself knew nothing about it. Therefore, under these circumstances, it was ridiculous to expect the Popular Minister to side with the Cabinet of ministers in the legislaturc on all points surrendering his right to disagree and indicate his differences on the floor of the House or even to remain neutral. This would have meant in effect a betrayal of the people's interest and of the policies of the party whose nominee he was. Constitutionally speaking, by an amendment to the Constitution Act, the popular minister had retained their status as elected members of the Assembly and their responsibility to the electorate could not be ignored. During the time of Sir B.N. Rau, the late Prime Minister, a somewhat workable formula had been discussed by which a dissenting minister could speak on the floor of the House expressing his view-point, and then stay neutral in voting. The new Prime Minister, Rai Bahadur Pandit, R.C

Kak repudiated the Rau formula and thus precipitated the constitutional deadlock.

It is a contradiction in terms to keep Ministres responsible to the electorate and to compel them to support every measure of an irresponsible government.

It agures ill for the future that we are entering the tumultuous times that lie ahead with a discredited constitutional expriment at our back. In the name of the National Conference I appeal to the Maharaja Bahadur to end this farce of diarchy and grant truly Responsible Government to the people of Kashmir. To the members of the British Cabinet Mission I would say : "Judge the constructive strength of our people's urge to freedom by the patient and persistent uphill struggle of our movement, including our attempt to give a fair trial to the constitutional experiment to our fellow patriots in British India. I would say, with your freedom is linked our destiny and our freedom is the ultimate guarantee of the stability of independent India."

96. Sheikh Mohd. Abdullah's statement on the ministerial crisis in the Kashimir State on April 22,1946.

Recently the Jammu and Kashmir National Conference Working Committee reviewed the farcical character of the diarchic experiment and decided to withdraw its representative from the Council of Ministers. Accordingly, Mirza Mohammad Afzal Beg resigned from the Ministership, and returned to the opposition benches.

The Prime Minister, backed by his clique of irresponsible bureaucrats, resorted to the base tactics of attempting to to bribe and disrupt the ranks of the National Conference itself. In so doing they had resorted to Machiavellian ways, and Mian Ahmad Yar, the Leader of the whose appointment had taken place by direct command of the Maharaja, and Assembly Party has fallen prey to them. His representative capacity just does not exist. Thus the Maharaja has not only put an axe on the elective system of appointing popular ministers, on the lines of his diarchic experiment, but has become

a party to the conspiracy against the popular movement in the Kashmir.

Such an attack on the rights of the people, and the unity of their representative organisation, has come at a time when the minds of the people of Kashmir are already exploring the new perspective opened up by the attempts at constitution-making of the Cabinet Mission. The question of the treaty rights of the Princes has become a moot point between the peoples of the State, the Princely Order, and the Paramount Power. For us in Kashmir, the re-examination of this relation-ship is a vital matter, because a hundred years ago, in 1846, the land and people of Kashmir were sold away to the servi-tude of the Dogra House by the British for 75 lacs of rupees. The then Governor of Kashmir resisted the transfer but was finally reduced to subjection with the aid of British. Thus the sale deed of 1846, misnamed the Treaty of Amritsar, had sealed the fate of the masses of Kashmir.

For the last fifteen years since the inception of our freedom Movement in 1931, we have attempted to give a fair trial to all reforms believing that readjustment of human relationships will take place with the extension of the democratic framework to all fields of our national life. Thus we believed that we could come in line with the rest of the world in the era of the Atlantic Charter and the revision of basic relationships with the dawn of the indepndence of nations.

But once again the last act of His Highness has exposed the continuance of the "feudal master governing the serfs" mentality. This state of affairs cannot be allowed to last. The resurgent spirit of the people challenges it in the name of human dignity.

No sale deed, however sacrosanct can condemn more than four million men and women to the servitude of an autocrat when the will to live under this rule is no longer there. The people of the Kashmir are determined to mould their own des tiny, and we appeal to the members of the Cabinet Mission to recognise the Justice and strength of our cause.

97. Resolution Working Committee all Jammu and Kashmir National Conference January 17, 1946 on the Treaty rights claimed by the Princes.

The Working Committee of the Jammu and Kashmir National Conference has taken into consideration the speech made by the Viceroy of India in the Princes Chamber on the 17th January, 1946 along with the declaration made by the Chancellor of the Chamber on behalf of the Princes regarding constitutional advancement in the States. After fully examining the salient points in both the speeches, the working committee has come to the following conclusion:

1. That the advice tendered by the Crown Representative to the Princes regarding the steps to be taken in making the administration of these States progressive did not amount to anything progressive. In fact it lost all the significance when he (Viceroy) made such progress conditional on the maintenance of the treaties and the consent of the Princes. These treaties and engagements which are outdated, reactionary and questionable have always stood and will always stand in the way of the States People's progress and to think that the Rulers will give up their privileged positions that they enjoy under them at their sweet will is nothing but wishful thinking. The National Conference has at several occasions made it clear that these treaties have been made in times and under circumstances which do not obtain now and been framed without seeking the consent of the States People. Under such circumstances no treaties or engagements which act as a dividing wall between their progress and that their brethren in British India, can be binding on the people.

98. Statement of Sheikh Mohammad Abdullah on Indian States 1946.

(Extract)

The Indian States problems are closely linked up with those of British India. They are common both to British India and

Indian States.

The British are well aware of the position, indicated the two lines of defence on which British Imperialism could relay. The first line of defence lies in the question of the Congress-League understanding, with the implication of Hindu-Muslim unity. The second line of defence rests on the position of the Princes who, in the eye of British Imperialism, should be safe-guarded.

With such a prospect before the people of India, it is necessary both for the people of British India and those of the Indian States to coordinate and merge the movements into a single channel. In order to do this, the people's organisations in the States should be strengthened.

The problem of the people in the States is primarily one of removing autocracy and establishing full responsible government. That object cannot be achieved unless a united front is offered by the people.

After the State's people's Conference at Udaipur I feel that the people in the Statesare now awakened more than ever before. There is now a more widespread political consciousness among them. It is true that sentiments have lately played a great part in the politics of the Country, particularly in British India. Take the instance of the cry of Pakistan. It was born of distress. Now it is stripped of all reasons. The question before the Muslims will be whether the realization of Pakistan is a blessing to them. I personally think that Pakistan will not help the Muslim masses but hinder them in their struggle for political and economic emancipation. In our State this question, however, does not arise, because an overwhelming majority of the people are Muslims and there is no need to fear Hindu domination.

99. Presidential Address Kisan Conference May 11, 1946.

(Extract)

The movement of the toiling masses in the world has awakened us also. We have begun to look at the freedom struggle of our country from a different angle. Now political freedom

alone is not our cherised goal. We demand and crave for social, economic and spiritual emancipation as well. The toiling masses of the subcontinent of India not only want to throw away the yoke of foreign imperialism but are also keen to free themselves from the bondage of indigenous feudalism and capitalism. The day of deliverance from alien rule is not far off. Events bear testimony to the fact that the British cannot stay long in India. There is awakening in-the country and the British cannot hold it in subjugation. But let me pose a question. Who will replace the British authority in India? Will there be a government of the upper classes or one representing the toiling messages ? This is the main and the biggest problem facing the country at present.

x x x x x

The upper class Hindus, having thrown into background the question relating to the future Government of India, are engaged in the dispute over Akhand Hindustan with a view to preserve their vested interests. Their counterpart among Muslims demand the establishment of Pakistan for identical reasons. But we stand neither for the one nor for the other. We believe that so long as it is not decided who the future rulers are to be we can neither support Akhand Hindustan nor side with the demand for Pakistan. Our first task is to do away with the prevailing social and economic inequality and injustice and lay the foundations of a new and just order of society. It is only when this objective is achieved that the people of India can themselves decide whether they want to preserve the unity of the country or devide it. At the present moment the basic problem referred to above does not receive necessary attention. The supporters of Akhand Hindustan and Pakistan want to preserve the present social order which is dominated by capitalists and feudalist. That being so the toiling masses can have least interest in this scramble for power.

x x x x x

Following in the footprints of the workers of Europe we have to put an end to the capitalistic and feudalistic social order so that a new society based on social justice and equality is brought into being. We want an end of all kind of exploitation so that the peasants are not tyrannised and the mill-owners get no opportunity to rob the workers of the fruits of their

labour. All laws aimed at sucking the blood of the toiling masses need to be repealed and abolished. We want establishment of a society which will guarantee to the workers fullest opportunity for progress.

x x x x

The freedom moment in our State is now fifteen years old. The toiling masses have nourished it by undergoing supreme financial and physical sacrifices but without any good to them. Only the upper classes have benefited by it. They have not only been able to preserve their vested interests but have also added to these. The reason is that both the toiling masses and the upper classes took part in this struggle and whereas the former fought for freedom, the latter used it to their advantage. Why it happened so is not difficult to understand. We had been entertaining hazy and vague notions about our goal so far. But now the Freedom Moment has reached a new stage. The toiling masses and the upper classes have fallen out. We want to revolutionize the present unjust society so that the toiling masses get their political and economic rights. This we call real freedom.

x x x x

Till now the upper classes exploited us because we were not clear about our goal but they find that such exploitation is not possible in future. Freedom for us means establishment of a new social order in our country which knows no exploitation and guarantees equal social, economic and political status for all. Our moment aims at affording all the opportunities and facilities to the toiling masses here in our country which a man in this world is entitled to. The upper classes have raised communal slogans so that the masses are misled in the name of religion. Also with a view to preserve their vested interests the upper classes have founded parties in the name of the nation and the country. The toiling masses have nothing to do either with the communal organisations or the so-called nationalist parties. Our struggle knows no communal barriers or nationalist prejudice. We are hostile to all distinctions based on colour, creed or race. We believe in a society which is free from the evils of landlordism, capitalism and feudalism and which is opposed to exploitation of man by man.

100. Quit Kashmir speech of Sheikh Mohammad Abdullah May, 26, 1946

(Extract)

The tyranny of the Dogras has lacerated our souls. The Kashmiris are the most handsome people, yet the most wretched looking. It is time for action. To end your poverty, you must fight slavery and enter the field of Jehad as soldiers. The fight slogan of our struggle is not only for our State but for the whole of India. India is fighting against Imperialism. The slogan was given on the banks of River Ravi...Then came the slogan of 'Quit India.' The British gained hold of India by the force of arms and by treachery.

The rulers of the Indian States who possess one-fourth of India, have always played traitors to the cause of Indian freedom. The demand that the Princely Order should quit is a logical extension of the policy of 'Quit India.' When the Indian freedom movement demands the complete withdrawal of British power, logically enough the stooges of British Imperialism also should go and restore sovereignty to its real owners—the people. When we raise the slogan of 'Quit Kashmir,' we naturally visualise that the Princes and Nawabs should quit all the States. I am sure this demand applies similarly to a State like Hyderabad where the people will, I am sure, raise their voice, 'Quit Hyderabad.'

Those Hindus who think along with Mr. R.C. Kak that the Dogra rule should remain, should never forget that we are treated in Kashmir as a bought-up race without distinction of religion.

Handcuffs jingle. They do not make us afraid. God will give us faith in victory. The voice of truth will prevail. Prophets have spoken for the truth, which has always triumphed finally.

Sovereignty is not the birthright of a ruler. Every man, woman and child will shout 'Quit Kashmir'. The Kashmiri nation has expressed its will. I ask for a plebiscite on this question.

101. Telegram from Provincial National Conference Committee Jammu to the Viceroy and Maharaja of Kashmir 20th June, 1946.

The solution of the Kashmir problem is a test for the honesty of the British Government. The people of the State deserve the same status as the people of British India deserve. Our State is at present confronted with a most critical situation. None but Sheikh Abdullah and his comrades can face this situation. Their immediate release is very essential. The present ministry consists mostly of the enemies of the people. This ministry is keeping the leaders behind the prison bars by way of mischief. The idea of Azad Kashmir is ridiculous. The wisest course is to join the Indian Union under the leadership of Sheikh Abdullah.

102. Statement of Sheikh Mohammad Abdullah before the Sessions Court, Srinagar.

(*Extract*)

I am not interested in a personal defence, and I would not have undertaken it if I had not felt that my trial for 'sedition' is something far more than a personal charge against me. It is, in effect, a trial of entire population of Jammu and Kashmir, even though some of them, being content with their transient personal interests or out of fear, may not be prepared to recognise or openly declare this.

Oppressed by the extreme poverty and lack of freedom and opportunity of the people of Jammu and Kashmir State, I and my colleagues of the Jammu and Kashmir National Conference, many of whom are behind prison bars or in exile today, have humbly sought to serve them during the past sixteen years. We have endeavoured to give faithful expression to the growing consciousness among the people of their imprescriptable rights, aspirations and desire for freedom. This has attracted the penal and preventive provisions of law. Where law is not based on the will of the people, it can lend itself to the suppression of their aspirations. Such law has no moral

validity even though it may be enforced for a while. There is a law higher than that, the law that represents the people's will and secures their well-being, and their is the tribunal of human conscience, which judges the rulers and the ruled alike by standards which do not change by the arbitrary will of the most powerful. To that law I gladly submit and that tribunal I shall face with confidence and without fear, leaving it to history and posterity to pronounce their verdict on the claims I and my colleagues have made not merely on behalf of the four million people of Jammu and Kashmir but also of the ninety-three million people of all the States of India. That claim has not been confined to the people of a particular race, or religion or colour. It applies to all, for I hold that humanity as a whole is indivisible by such barriers and human rights must always prevail. The fundamental rights of all men and women to live and act as free beings, to make laws and fashion their political, social and economic fabric, so that they may advance the cause of human freedom and progress, are inherent and cannot be denied though they may be suppressed for a while. I hold that sovereignty resides in the people, all relationships political, social and economic, derive authority from the collective will of the people.....

It was clear that the old treaties with the States had to go. They represented something that had no relation to the modern world or to the India of today. They could not be reconciled with the inevitable changes in India and in the Sates. If this was clear to begin with, it become an accepted fact by the statement issued by Cabinet Delegation of 16th May last. That statement declared that paramountcy would end when the new constitution of free India came into being. It was an inevitable consequence that the old treaties and sanads and other engagements would go the way of paramountcy and the British Government being out of the picture, a new relationship would have to be negotiated between what is now known as British India and the States. The demand for the abrogation of the Amritsar Treaty was, in effect, disposed of by this clear decision. The future constitutional set-up-in the State of Jammu and Kashmir cannot derive authority from the old source of relationship which was expiring and was bound to end soon. That set-up could only

rest on the active will of the people of the State, conferring on the Head of the State the title and authority drawn from the true and abiding source of sovereignty, that is the people. The "Quit Kashmir" cry symbolised and gave concrete shape to this demand for the termination of a system of Government which was in process of dis-solution all over India. The cry had nothing personal about it.....

Some allegations have been made that "Quit Kashmir" and the demand for the abrogation of the Treaty of Amritsar had communal or communist inspiration. This is a travesty of fact and I deny and repudiate these allegations. The National Conference is essentially a national organisation including in its fold all people who agree with its objective, and co-operating with the All-India States People's Conference, with which it is affiliated. It stands in the All-India context for the independence and freedom of India. It stands also for social and economic changes to end privilege and to raise the masses.

103. Resolution : Congress Working Committee on Kashmir 21st November, 1946.

The Working Committee have previously expressed their disapproval of the activities of Kashmir authorities during the past few months in repressing the people of the State and denying them their normal civil liberties. The Committee had proposed to send a deputation to enquire into these matters in Kashmir State and had invited the state authorities to cooperate in this task. The response from those authorities was not satisfactory and conditions in various parts of India delayed any action being taken on the previous resolution. Recent reports state that the Kashmir authorities are preventing free and fair elections to the State Assembly and have arrested the President and members of the Election Committee of the Kashmir National Conference. The Committee takes a serious view of the flouting of public opinion and of activities which must reduce the coming elections to a farce.

104. Statement of Mir Waiz Moulvi Yousuf Shah on Congress Working Committee Resolution dated 25th September, 1946.

The Congress Working Committee has decided to send a deputation to Kashmir to inquire into the political conditions prevailing here. This interference into the domestic politics of Kashmir is a positive proof of the fact that the Congress leaders still cherish the dream of turning Kashmir into an anti-Pakistan base. The Working Committee has complained that the Kashmir Government has not dealt with the recent affairs in a friendly manner. The people of Jammu and Kashmir are fully aware of the fact that the Congress has no genuine sympathy for them. The tears they are sheding for Kashmiris are those of crocodile. Behind the smoke screen of the alleged atrocities of the Kashmir Government, the Hindu capitalists want to get the State into their grip, but they should note that all their efforts in this respect are bound to fail.

We do not say that Kashmir Government should ban the entry of any deputation to Kashmir, but I warn that if it gets terrified at the might of the Congress and strikes an unholy alliance with the National Conference fascists, it will have to face the terrific opposition of the Muslims. And this sinster alliance will be smashed to pieces.

I trust that the Kashmir Government would, in the interest of peace, boldly face the Congress onslaught. The Congress has obviously taken into its head to enslave whole of Muslim India. I can say it without any fear of contradiction that the sending of a delegation to Kashmir is a part of the sinster game.

The Muslims of Kashmir have warded off Pt. Nehru's invasion in 1940, 1945 and 1946. Now he is again out to make a fresh attempt and it is the duty of the Kashmir Muslims particularly and all the well wishers of the country generally to smash-up this onslaught.

105. Press Statement : Chowdhry Hamidullah Khan President Jammu and Kashmir Muslim Conference, 10th May, 1947.
(Extract)

The British Paramountcy of the States has come to an end. It has been transferred to the people. No solution has so far been found out for conceding the demands of various communities living in India. If Kashmir has to keep itself aloof from carnage and bloodshed, it should lose no time in adopting a strong and bold policy. His Highness the Maharaja Bahadur should declare Kashmir independent immediately. A separate constituent assembly to frame the constitution for the state according to the wishes of the people, should be established at once. His Highness the Maharaja Bahadur will receive the cooperation of Muslims in carrying out this policy. The Muslims form 80% of the population. They are represented by the Muslim Conference. The Muslims will welcome the Maharaja Bahadur as the first constitutional ruler of independent and democratic Kashmir.

106. Statement of Acharya Kriplani, Congress President at Mujahid Manzil, Srinagar dated 21st May, 1947.
(Extract)

You should not worry if I fail in my Kashmir mission. You can lead a prosperous life, if your Maharaja is happy. I had a desire to see the Maharaja Bahadur also but unfortunately he has stayed at Jammu. I hope I shall get the privilege of seeing the Maharaja Bhadur. I have not come here to persuade the State to participate in the Constituent Assembly. We are always prepared to give you all possible help, whenever you require it. We shall sacrifice our lives for you. You should strengthen your organisation and pay your attention towards mutual cooperation. I appeal to the people to save the State from communal disharmony and disturbances at any cost. You should help one another irrespective of caste and creed. The Government will try to sow seeds of communal troubles in the

State through its agents. But you should purge your organisation of such elements so that your State may remain immune from communal disturbances.

107. Resolution Congress Working Committee on States, dated 15th June, 1947.

The Committee does not agree with the theory of paramountcy as enunciated and interpreated by the British Government; but even if that is accepted, the consequences that flow from the lapse of paramountcy are limited in extent. The privileges and obligations as well as the subsisting rights as between the States and the Government of India cannot be adversely affected by the lapse of paramountcy. These rights and obligations have to be considered separetely and renewed or changed by mutual agreement. The relationship between the Government of India and the States would not be exhausted by lapse of paramountcy. The lapse does not lead to the independence of the States.

108. Resolution Kisan Mazdoor Conference, September 5, 1947.

(Extract)

The most important national problem facing the people of Jammu and Kashmir at the present moment is whether the State should accede to India or to Pakistan. The future of the country depends on the solution of this problem. If it is solved in a right way the four million State people can live peacefully and oomfortably in future; they will then also make sound progress. Otherwise the State shall have to face civil war and ruin. Five months ago meetings of the Working Committee and the General Council of the Kisan Mazdoor Conference were held at Achhabal on 6th and 7th April. A resolution was adopted in these meetings advising the Maharaja of Kashmir that after establishing friendly relations with both the

Congress and the Muslim League he should declare the independence of the State and that simultaneously he should introduce complete responsible Government in the country. Things have moved with lightening rapidity during past five months. On 3rd June the British Government announced a plan of India's independence which has been accepted by both the Congress and the Muslim League. According to the plan the subcontinent has been partitioned on the very day of independence. Today the two dominions of India and Pakistan are in existence. The basic principle which guided the partition of the country according to 3rd June plan was that all the provinces and districts where Hindus are in majority have been included in the Indian Union and all those regions where Muslims are is a majority have been put together to form pakistan. The provinces of the Punjab and Bengal have been divided into two parts each under the operation of the same principle. The district of Sylhet in Assam has also been included in the province of East Pakistan according to it.

British statesmen and the Indian politicians particularly the Congress leaders have advised the native rulers that they should join either of the two dominions and should in no case remain independent. Lord Mountbaten in his capacity as Viceroy made an important pronouncement that while deciding to accede to either dominion the Princes should take into consideration the geographical position of their respective States, that is, the right decision for a State will be to accede to the dominion which is adjacent to it.

The Working Committee of the Kisan Mazdoor Conference has fully and carefully considered the developments of the last five months. It has also consulted the majority of the members of the General Council of the Conference. The Committee is of the opinion that there is now no alternative before the State but to join Pakistan. If she does not do so, the country and its people shall have to face immense trials and tribulations.

Hundreds of the States have already acceded to either the Indian Union or Pakistan in accordance with the principle on the basis of which the subcontinent was partioioned. At present only two of the States...Kashmif and Hyderabad...remain

which have taken no decision yet. Recent developments show that these two states also cannot remain aloof for a long time and soon they shall have to decide about their future.

The overwhelming majority of Kashmir's population is Muslim. The State is contiguous with Pakistan territories. All the three big highways and all the rivers of the State go into Pakistan. For these reasons the Working Committee is of the opinion that the State should accede to Pakistan. This alone will be the natural and the right course to adopt. The state cannot remain independent; nor can it, owing to its overwhelming Muslim population and being adjecent to the Pakistan tertitories, accede to India. The Working Committee hold the view that the majority of the population desire to accede to Pakistan and the welfare of the 39 Lakhs of peasants and workers also lies in this.

The Working Committee appeals to all the people of the State in general, to whatever section, caste or creed they belong, and the working classes in particular that they should unanimously request the Maharaja to declare the State's accession to Pakistan.

If the Maharaja entertains any doubts about the obvious public opinion that the State should accede to Pakistan then he should order a referendum in which all adults should have the right to vote on the issue whether the State should accede to India or to Pakistan.

The Working Committee hopes that the people from all parts of the State will support this democratic method of solution so that peace is maintained and the country can progress.

109. Resolution of Kashmir Socialist Party dated September 18, 1947.

(*Extract*)

The Kashmir Socialist party has given their best and closest consideration to the question whether the State of Jammu and Kashmir should accede to India or to Pakistan or it should remain independent. The Party is of the opinion that in view of the developments during the last few months the natural

and the best course for the State to adopt would be to join Pakistan and not India. For obvious and substantial reasons the Party believes that the State cannot remain independent. After mature consideration the Party has arrived at the decision that in the best interests of the poor and backward people accesion to Pakistan is desirable. The Party impresses upon the Maharaja that without any further unnecessary delay he should make an announcement accordingly.

110. Kashmir-Pak Standstill Aggrement. Telegram from Prime Minister, Kashmir State, to Sardar Abdur Rob Nishtar, States Relations Department, Karachi, dated 12th August, 1947.

Jammu and Kashmir Government would welcome Standstill Aggrements with Pakistan on all matters on which these exist at present moment with outgoing British Indian Government. It is suggested that existing arrangements should continue pending settlement of details and formal execution of fresh agreement.

111. Telegram from Foreign Secretary, Government of Pakistan, Karachi, to Prime Minister of Jammu and Kashmir, Srinagar, deted 15th August, 1947.

Your telegram of the 12th. The Government of Pakistan agree to have a Standstill Agreement of Jammu and Kashmir for the continuance of the existing arrangements pending settlement of details and formal execution of fresh agreements.

112. Maharaja's Accession offer to India.

Text of letter dated October 26, 1947 from Sri Hari Singh, the Maharaja of Jammu and Kashmir to Lord Mountbatten, the Governor-General of India.

My dear Lord Mountbatten,

I have to inform your Excellency that a grave emergency has arisen in my State and request immediate assistance of your Government.

As your Excellency is aware the State of Jammu and Kashmir has not acceded to the Dominion of India or to Pakistan. Geographically my State is contiguous to both the Dominions. It has vital economical and cultural links with both of them. Besides my State has a common boundary with the Soviet Republic and China. In their external relations and Dominion of India and Pakistan cannot ignore this fact.

I wanted to take time to decide to which Dominion I should accede, or whether it is not in the best interests of both the Dominions and my State to stand independent, of course with friendly and cordial relations with both.

I accordingly approached the Dominions of India and Pakistan to enter into Standstill Agreement with my State. The Pakistan Government accepted this Agreement. The Dominion of India desired further discussions with representatives of my Government. I could not arrange this in view of the developments indicated below. In fact the Pakistan Government are operating Post and Telegraph system inside the State.

Though we have got a Standstill Agreement with the Pakistan Government permitted steady and increasing strangulation of supplies like food, salt and petrol to my State.

Afridis, soldiers in plain clothes, and desperadoes with modern weapons have been allowed to infliter into the State at first in Poonch and then in Sialkot and finally in mass area adjoining Hazara District on the Ramkot side. The fesult has been that the limited number of troops at the disposal of the State had to be dispersed and thus had to face the enemy at the several points simultaneously, that it has become difficult to stop the wanton destruction of life and property and looting. The Mahora power-house which supplies the electric current to the whole of Srinagar has been burnt. The number of women who have been kidnapped and raped and makes my heart bleed. The wild forees thus let loose on the State are marching on with the aim of capturing Srinagar, the summer Capital of my Government, as first step to over running the whole State.

The mass inflitration of tribesman drawn from the distant areas of the North-West Frontier coming regularly in motor trucks using Mansehra-Muzaffarabad Road and fully armed with up-to-date weapons cannot possibly be done without the knowing of the Provincial Govcrnment of the North-West Frontier Province and the Government of Pakistan. In spite of repeated requests made by my Governnment no attempt has been made to check these raiders or stop them from coming to my State. The Pakistan Radio even put out a story that a Provisional Government has been set up in Kashmir. The people of my State both the Muslims generally have taken no part at all.

With the conditions obtaining at present in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Domination of India. I have accordingly decided to do so and I attach the Instrument of Accession for acceptance by your Government. The other alternative is to leave my State and my people to fee-booters. On this basis no civilized Government can exist or be maintained. The alternative I will never allow to happen as long as I am Ruler of the State and I have life to defend my country.

I may also inform your Excellency's Government that it is my intention at once to set up an interim Government and ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister.

If my State has to be saved immediate assistance must be availabe at Srinagar. Mr. Menon is fully aware of the situation and he will explain to you, if further explanation is needed.

In haste and with kindest regards.

Yours Sincerely
Hari Singh

The Palace, Jammu
26th October, 1947.

113. Instrument of Accession of Jammu and Kashmir State dated 26 October, 1947.

Whereas, the Indian Independence Act, 1947, provides that as from the fifteenth day of August 1947, there shall be sut up an independent Dominion known as INDIA, and that the Government of India Act, 1935, shall, with such omissions, additions, adaptations and modifications as the Governor-General may by order specify, be applicable to the Dominion of India;

And whereas the Government of India Act, 1935, as so adopted by the Governor-General provides that an Indian State may accede to the Domination of India by an Instrument of Accession executed by the Ruler thereof;

Now, therefore, I, Shriman Indar Mahandar Rajrajeshwar Maharajadhiraj Shri Hari Singhji, Jammu Kashmir Naresh Tatha Tibbet adi Deshadhipathi, Ruler of Jammu and KASHMIR State, in the exercise of my sovereignty in and over my said State do hereby execute this my Instrument of Accession and;

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in ralation to the State of Jammu and Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Domination of India, on the 15th day of August 1947 (which Act as so in force is hereafter referred to as "the Act").
2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.
3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any function in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbirator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrrangements with the Government of India under any such future constitution.

8. Nothing in this Intrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October, nineteen hundred and forty-seven.

Sd/- Hari Singh
Maharajadhiraj of
Jammu and Kashmi State.

114. Acceptance of Instrument of Accession of Jammu and Kashmir State.

I do hereby accept this Instrument of Accession.

Dated this twenty-seventh day of October, nineteen hundred and fortyseven.

Mountbatten of Burma
Governor-General of India

115. Reply of 27 October 1947, from Lord Mountbatten to Maharajah Sir Hari Singh.

My dear Maharajah Sahib,

Your Highness's letter, dated the 26th October, has been delivered to me by Mr. V.P. Menon. In the special circumstances mentioned by Your Highness, my Government have decided to accept the accession of Kashmir State to the Dominion of India. Consistently with their policy that, in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that, as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by a reference to the people. Meanwhile, in response to your Highness's appeal for military aid, action has been taken today to send troops of the Indian Army to Kashmir to help your own forces to defend your territory and to protect the lives, property and honour of your people.

My Government and I note with satisfaction that your Highness has decided to invite Sheikh Abdullah to form an Interim Government to work with your Prime Minister.

Yours sincerely,

(Sd/-) Mountbatten of Burma

116. Chief Secretariat (General Department). Emergency Administration Order No. 176-H of 1947, 30th October 1947.

We are hereby pleased to command that pending the formation of the Interim Government as agreed upon and in view of the emergency that has arisen I charge Sheikh Mohammad Abdullah to function as the Head of the Administration with power to deal with the emergency.

Sheikh Mohammad Abdullah be sworn in by the Chief Justice or any other Judge of the High Court at Srinagar.

(Sd/-) Hari Singh,
Maharaja.

117. Emergency Council.

1. The Hon'ble Sheikh Mohammad Abdullah, Head of Emergency Administration.
2. The Hon'ble Bakshi Ghulam Mohammad, Deputy Head of Administration.
3. The Hon'ble Mirza Mohd. Afzal Beg, Emergency Officer, Anantnag District.
4. The Hon'ble G.M. Sadiq, Emergency Officer, Internal Security, Home Guards, Cultural Front.
5. The Hon'ble Sham Lal Saraf, Emergency Officer, Trade and Supplies.
6. The Hon'ble Girdhari Lal Dogra, Emergency Officer, Kathua.
7. The Hon'ble Sardar Budh Singh, Emergency Officer, (Goodwill Mission to Jammu).
8. The Hon'ble Pt. Jia Lal Kilam, Emergency Officer, Food.
9. Maulana Mohd. Syed, Emergency Officer, Publicity.
10. Kh. Gulam Moni-ud-din, Emergency Officer, Communications.
11. Kh. Abdul Ahad, Emergeney Officer. (Firewood, Fuel).
12. Soofi Mohd. Akbar, Emergency Officer, Baramulla.
13. Peer Mohd. Maqbool, Emergency Officer, Muzaffarabad.

14. Pt. Kashapa Bandhu, Emergency Officer, Refugees & Rehabilitation.
15. Mr. Mohi-ud-Din Hamdani, Emergency Officer, Peace Brigade.
16. Mr. D.P. Dhar, Secretary, Internal Security & Law and Order.
17. Mr. J.N. Zutshi, Private Secretary to the Head of Administration and Secretary to the Emergency Council.
18. Kh. Ahsan Ullah, Emergency Officer, Transport.
19. Mr. Mohd. Amin, Emergency Officer, Banihal.
20. Col. Ram Lal, Emergency Officer, Home Guards.
21. Col. Baldev Singh Pathania, Chief Emergency Officer, Jammu.
22. Col. Adalat Khan, Chief Administrative Officer, Bhadarwah.
23. Col. Baldev Singh Samval, Emergency Officer, Border Scouts, Jammu.

118. Proclamation of Shreeman Indar Mohinder Rajrajeshwar Maharajadhiraj Shree Harisingh Ruler of Jammu and Kashmir and Dependencies, dated 5th March, 1948.

In accordance with the traditions of my dynasty I have, from time to time, provided for increasing association of my people with the administration of the State with the object of realising the goal of full Responsible Government at as early a date as possible and in pursuance of that object have, by the Jammu and Kashmir Constitution Act of 1996 (xiv of 1996) established a Constitutional Government with a Council of Ministers, a Legislature with a majority of elected members and an independent Judiciary;

I have noted with gratification and pride the progress so far made and the legitimate desire of my people for the immediate establishment of a fully democratic constitution based on adult franchise with a hereditary Ruler from my dynasty as the Constitutional Head of an Executive responsible to the legislature;

I have already appointed the popular leader of my people Sheikh Mohammad Abdullah as the Head of the Emergency Administration;

It is now my desire to replace the Emergency Administration by a Popular Interim Government and to provide for its powers, duties and functions, pending the formation of a fully democratic Constitution.

I accordingly HEREBY ORDIAN AS FOLLOWS;

1. My Council of Ministers shall consist of the Prime Minister and such other Ministers as may be appointed on the advice of the Prime Minister. I have by Royal Warrant appointed Sheikh Mohammad Abdullah as the Prime Minister with effect from today.
2. The Prime Minister and other Ministers shall function as a Cabinet and act on the principle of joint responsibility. A Dewan appointed by me shall also be a member of the Cabinet.
3. I take this opportunity of giving once again a solemn assurance that all sections of my people will have opportunites of service, both civil and military, solely on the basis of their merits and irrespective of creed or community.
4. My Council of Ministers shall take appropriate steps, as soon as restoration of normal conditions has been completed, to convene a National Assembly based upon adult suffrage, having due regard to the principle that the number of respresentatives from each voting area should; as far as practicable, be proportionate to the population of that area.
5. The Constitution to be framed by the National Assembly shall provide adequate safeguards for the minorities and contain appropriate provisions guaranteeing for the freedom of conscience, freedom of speech and freedom of assembly.
6. The National Assembly shall, as soon as the work of framing the new constitution is completed, submit it through the Council of Ministers for my acceptance.
7. In conclusion I repeat the hope that the formation of a popular Interrim Government and the inauguration, in the near future, of a fully Democratic Constitution will ensure the contentment, happiness and the

moral and material advancement of my beloved people.

119. Proclamation Government Gazette Dated 7th Har 2006/ 9th June, 1949.

Whereas I have decided for reasons of health to leave the State for a temporary period and to entrust to the Yuvaraj Shree Karan Singh Ji Bahadur for that period all my powers and functions in regard to the Government of the State;

Now, therefore, I hereby direct and declare the all powers and functions, whether legislative, executive or judicial which are exercisable by me in relation to the State and its Government, including in particular my right and prerogative of making Laws, of issuing Proclamations, Orders and Ordinances, of remitting, commuting or reducing sentences and of pardoning offenders, shall during the period of my absence from the State be exercisable by Yuvaraj Shree Karan Singh Ji Bahadur.

Sd/- Hari Singh
Maharajadhiraj.

120. Resolution National Conference, 1950.

This meeting of the General Council of the All Jammu and Kashmir National Conference views with great concern the repeated failure of the U.N. to redress the wrongs of aggression of which the people of the State continue to be victims. This failure in its opinion is due to the continued concessions given to Pakistan by placing a premium on her intransigeance.

The indecision and unrealistic procedure adopted so far has condemned the people of the State to a life of agonizing uncertainity. The All Jammu and Kashmir National Conference is gravely concerned and cannot any longer afford to

ignore the perpetuation of these conditions of doubt and frustration. In the opinion of the General Council, time has come when the initiative must be regained by the people to put an end to this indeterminate State of drift and indecision.

The General Council recommends to the Supreme National Executive of the people to take immediate steps for convening a Constituent Assembly based upon adult suffrage and embracing all sections of the people and all the Constituents of the State for the purpose of determining the future shape and affiliations of the State of Jammu and Kashmir. In this sovereign Assembly embodying the supreme will of the people of the State, we shall give ourselves and our children a constitution worthy of the traditions of our freedom struggle and in accordance with the principles of New Kashmir.

121. Text of the Proclamation issued by the Head of the Jammu and Kashmir State on 1st May, 1951.

Whereas it is the general desire of the people of the State of Jammu and Kashmir that a Constituent Assembly should be brought into being for the purpose of framing a Constitution for the State;

Whereas it is commonly felt that the convening of the Assembly can no longer be delayed without detriment to the future well-being of the State;

And whereas terms of the proclamation of the Maharaja dated 5 March, 1948 in regard to the convening of a national assembly as contained in clauses 4 to 6 of the operative part thereof do not meet the requirements of the present situation;

I, Yuvraj Karan Singh, do hereby direct as follows:

1. A Constituent Assembly consisting of representatives of the people, elected on the basis of adult franchise, shall be constituted forthwith for the purpose of framing a constitution for the State of Jammu and Kashmir;
2. For the purpose of the said elections the State shall be divided into a number of territorial constituencies,

each containing a population of 40,000 or as near thereto as possible, and each electing one member. A delimitation Committee shall be set up by the Government to make recommendations as to the number of constituencies and the limits of each constituency;

3. Elections to the Constituent Assembly shall be on the basis of adult franchise, that is to say, every person who is a State subject of any class, is not less than twenty-one years of age on the first day of March, has been a resident in the constituency for such period as may be prescribed by the rules, shall be entitled to register in the electoral rolls of that constituency, provided that any person who is of unsound mind or has been so declared by a competent court, shall be disqualified for registration;
4. The vote at the election shall be direct and by secret ballot;
5. The Constituent Assembly shall have power to act notwithstanding any vacancy of the Membership thereof;
6. The Constituent Assembly shall frame its own agenda and make rules for the governing of its procedure and the conduct of its business;

The Government shall make such rules and issue such instructions and orders as may be necessary to give effect to the terms of this proclamation.

122. Speech of the Hon'ble Sheikh Mohammed Abdullah in the Constituent Assembly.

(*Extract*)

We must remember that our struggle for power has now reached its successful climax in the convening of this constituent Assembly. It is for you to translate the vision of New Kashmir into reality, and I would remind you of its opening

words, which will inspire our labours:

> "We, the people of Jammu, Kashmir, Ladakh and the Frontier regions, including Poonch and Chenani Illaqas-commonly known as Jammu and Kashmir State in order to perfect our union in the fullest equality and self-determination to raise ourselves and our children forever from the abyss of oppression and poverty, degredation and superstition, from medieval darkness and ignorance, into the sunlit valleys of plenty, ruled by freedom, science and honest toil, in worthy participation of the historic resurgence of the peoples of East, and the working masses of the world, and in determination to make this our country a dazzling gem on the snowy bossom of Asia, do propose and propound the following constitution of our State."

This was passed at the 1944 session of the National Conference in Srinagar. Today, in 1951, embodying aspirations, men and women from the four corners of the State in this Constituent Assembly have become the repository of its sovereign authority. This Assembly, invested with the authority of a constituent body, will be the fountain-head of basic laws, laying the foundation of a just social order and safeguarding the democratic rights of all the citizens of the State.

You are the sovereign authority in this State of Jammu and Kashmir; what you decide has the irrevocable force of law. The basic democratic principle of sovereignty of the nation, embodied ably in the American and French Constitutions, is once again given shape in our midst. I shall quote the famous work of Article 3 of the French Constitution of 1971 :

> "The source of all sovereignty resides fundamentally in the nation...Sovereignty is one and indivisible, inalienable and imprescriptable. It belongs to the nation."

We should be clear about the responsibilities that this power invests us with. In front of us lie decisions of the highest national importance which we shall be called upon to take. Upon the correctness of our decisions depends not only t he happiness of our land and people now, but the fate as well

of generations to come.

What then are the main functions that this Assembly will be called upon to perform ?

One great task bafore this Assembly will be to devise a Constitution for the future governance of the country. Constitution-making is a difficult and detailed matter. I shall only refer to some of the broad aspects of the Constitution, which should be the product of the labours of this Assembly.

Another issue of vital import to the nation involves the future of the Royal Dynasty. Your decision will have to be taken both with urgency and wisdom, for on that decision rests the future form and character of the State.

The Third major issue awaiting your deliberations arises out of the Land Reforms which the Government carried out with vigour and determination. Our "Land to the tiller" policy brought light into the dark homes of the peasantry; but, side by side, it has given rise to the problem of the landowners' demand for compensation. The nation being the ultimate custodian of all wealth and resources, the representatives of the nation are truely the best jury for giving a just and final verdict on such claims. So in your hands lies the power of this decision.

Finally, this Assembly will after full consideration of the three alternatives that I shall state later, declare its reasoned conclusion regarding accession. This will help us to canalise our energies resolutely and with greater zeal in directions in which we have already started moving for the social and economic advancement of our country.

To take our first task, that of Consitution-making, we shall naturally be guided by the highest principles of the democratic constitutions of the world. We shall base our work on the principles of equality, liberty and social justice which are an integral feature of all progressive constitutions. The rule of law as understood in the democratic countries of the world should be the cornerstone of our political structure. Equality before the law and the independence of the Judiciary from the influence of the Executive are vital to us. The freedom of the individual in the matter of speech, movement and association should be guaranted; freedom of the press and of opinion would also be features of our Constitution. I need not refer in

great detail to all those rights and obligations, already embodied in New Kashmir, which are integral parts of democracy which has been defined as "an apparatus of social organisation where in people govern through their chosen representatives and are themselves guaranteed political and civil liberties".

You are no doubt aware of the scope of our present constitutional ties with India. We are proud to have our bonds with India, the goodwill of whose people and government is avilable to us in unstinted and abundant measure. The Constitution of India has provided for a federal union and in the distribution of soverign powers has treated us differently ftom other constituent units. With the exception of the items grouped under Defence, Foreign Affairs and communication in the Instrument of Accession, we have complete freedom to frame our Constitution in the manner we like. In order to live and prosper as good partners in a common endeavour for the advancement of our peoples, I would advise that, while safeguardiug our autonomy to the fullest extent so as to enable us to have the liberty to build our country according to the best traditions and genius of our people, we may also by suitable constitutional arrangements with the Union establish our right to seek and compel Federal cooperation and assistance in this great task, as well as offer our fullest cooperation and assistance to the Union.

Whereas it would be easy for you to devise a document calculated to create a frame work of law and order, as also a survey of the duties and rights of citizens, it will need more arduous labour to take concrete decisions with regard to the manner in which we propose to bring about the rapid economic development of the State and more equitable distribution of our national income among the people to which we are pledged. Our National Conference avows its faith in the principal that there is one thing common to men of all castes and creeds, and that is their humanity. That being so, the one ailment which is ruthlessly sapping the vitality of human beings in Jammu & Kashmir is their appalling poverty, and if, we merely safeguard their political freedom in solemn terms, it will not affect their lives materially unless it guarantees them economic and social justice. New Kashmir contains a statement of the objectives of our social policy. It gives broadly a picture of the kind of life

that we hope to make possible for the people of Jammu & Kashmir and the manner in which the economic organisation of the country will be geared to that purpose. These ideals you will have to integrate with the political structure which you will devise.

The future political set-up which you decide upon for Jammu & Kashmir must also take into consideration the existance of various sub-national groups in our State. Although culturally diverse history has forged an uncommon unity between them; they all are pulsating with the same hopes and aspirations, sharing in each others joys and sorrows. While guaranteeing this basic unity of the State, our constitution must not permit the concentration of power and privilege in the hands of any particular group or territorial region. It must afford the fullest possiblities to each of these groups to grow and flourish in conformity with their cultural characteristics, without detriment to the integral unity of the State or the requirements of our social and economic policies.

Now let us take up an issue of basic importance which involves the fundamental character of the State itself. As an instrument of the will of a self-determining people who have now become sovereign in their own right, the Constituent Assembly will now re-examine and decide upon the future of the present ruling dynasty, in respect of its authority.

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It is clear that this dynasty can no longer exercise authority on the basis of an old discredited Treaty. During my trial for sedition in the "Quit Kashmir" movement, I had clarified the attitude of my party when I said:

> "The future constitutional set-up in the State of Jammu & Kashmir cannot derive authority from the old source of relationship which was expiring and was bound to end soon. The set-up could only rest on the active will of the people of the State, conferring on the head of the State the title and authority drawn from the true and abiding source of sovereignty, that is the people."

On this occasion, in 1946, I had also indicated the basis on which an individual could be entrusted by the people with the symbolic authority of a Constitutional Head:

> "The State and its Head represent the constitutional circumference and the centre of this sovereignty respectively, the Head of the State being the symbol of the authority with which the people may invest him for the realisation of their aspirations and the maintenance of their rights".

In consonance with these principles, and in supreme fulfilment of the people's aspirations, it follows that a Constitutional Head of the State will have to be chosen to exercise the function which this Assembly may chose to entrust to him.

So far as my Party is concerned, we are convinced that the institution of monarchy is incompatible with the spirit and needs of modern times which demand an egalitarian relationship between one citizen and another. The supreme test of a democracy is the measure of equality of opportunity that it affords to its citizens to rise to the highest point of authority and position. In consequence, monarchies are fast disappearing from the world picture, as something in the nature of feudal anachronisms. In India, too, where before the partition, six hundred and odd Princes exercised rights and privileges of rulership, the process of democratisation has been taken up and at present hardly ten of them exercise the limited authority of constitutional heads of States.

After the attainment of complete power by the people, it would have been an appropriate gesture of goodwill to recognise Maharaja Hari Singh as the first Constitutional Head of the State. But I must say with regret that he has completely forfeited the confidence of every section of the people. His incapacity to adjust himself to changed conditions and his antiquated views on vital problems constitute positive disqualifications for him to hold the high office of a democratic Head of the State. Moreover, his past actions as a ruler have proved that he is not capable of conducting himself with dignity, responsibility and impartiality. The people still remember with pain and regret his failure to stand by them in times of crisis, and his incapacity to afford protection to a section of

his people in Jammu.

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Finally we come to the issue which has made Kashmir an object of world interest, and has brought her before the forum of the United Nations. This simple issue has become so involved that people have begun to ask themselves, after three and a half years of tense expectancy, "Is there any solution ?" Our answer is an the affirmative. Everything hinges round the genuineness of the will to find a solution. If we face the issue straight, the solution is simple.

The problem may be posed in this way. Firstly, was Pakistan's action in invading Kashmir in 1947 morally and legally correct, judged by any norm of international behaviour ? Sir Owen Dixon's verdict on this issue is perfectly plain. In unambiguous terms he declared Pakistan an aggressor. Secondly, was the Maharajah's accession to India legally valid or not ? The legality of the accession has not been seriously questioned by any responsible or independent person or authority.

These two answers are obviously correct. Then where is the justification of treating India and Pakistan at par in matters pertaining to Kashmir ? In fact, the force of logic dictates the conclusion that the aggressor should withdraw his armed forces, and the United Nations should see that Pakistan gets out of the State.

In that event, India herself, anxious to give the people of the State a chance to express their will freely, would willingly cooperate with any sound plan of demilitarization. They would withdraw their forces, only garrisoning enough posts to ensure against any repetition of that earlier treacherous attack from Pakistan.

These two steps would have gone a long way to bring about a new atmosphere in the State. The rehabilitation of displaced people, and the restoration of stable civic conditions woud have allowed people to express their will and take the ultimate decision.

We as a Government are keen to let our people decide the future of our land in accordance with their own wishes. If

these three preliminary processes were accomplished, we should be happy to have the assistance of international observes to ensure fair play and the requisite conditions for a free choice by the people.

Instead invader and defender have been put on the same plane. Under various garbs, attempts have been made to sidetrack the main issues. Sometimes, against all our ideals of life and way of living attempts divide our territories have been made in the form of separation of our State religion-wise, with ultimate plans of further disrupting its territorial integrity. Once an offer was made to police our country with Commonwealth forces, which threatens to bring in Imperial control by the back door. Besides the repugnance which our people have, however, to the idea of inviting foreign troops on their soil, the very presence of Commonwealth troops could have created suspicious among our neighbours that we were allowing ourselves to be used as a base of possible future aggression against them. This could easily have made us into a second Korea.

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The Cabinet Mission Plan has provided for three courses which may be followed by the Indian States when determining future affiliations. A State can either accede to India or accede to Pakistah, but failing to do either, it still can claim the right to remain independent. These three alternatives are naturally open to our State. While the intention of the British Government was to secure the privileges of the Princes, the representatives of the people must have the primary consideration of promoting the greatest good of the common people. Whatever steps they take must contribute to the growth of a democratic social order wherein all invidious distinctions between groups and creeds are absent. Judged by this supreme considerations, what are the advantages and disadvantages of our State's accession to either India or Pakistan or of having and independent Status.

As a realist I am conscious that nothing is all black or all white, and there are many facts to each of the propositions before us. I shall first speak on the merits and demerits of

the State's accession to India. In the final analysis, as I understand it, it is the kinship of ideals which determines the strength of ties between two States. The Indian National Congress has consistently supported the cause of the State's peoples' freedom. The autocratic rule of the Princes has been done away with and representative government have been entrusted with the administration. Steps towards democratisation have been taken and these have raised the people's standard of living, brought about much-needed social reconstruction, and, above all built up their very independence of spirit. Naturally, if we accede to India there is no danger of a revival of feudalism and autocracy. Moreover, during the last four years, the Government of India has never tried to interfere in our internal autonomy. This experience has sirengthened our confidence in them as a democratic State.

The real character of a State is revealed in its Constitution. The Indian Constitution has set before the country the goal of secular democracy based upon justice, freedom and equality for all without distinction. This is the bedrock of modern democracy. This should meet the argument that the Muslims of Kashmir cannot have security in India, where the large majority of the population are Hindus. Any unnatural clevage between religious groups is the legacy of Imperialism, and no modern State can afford to encourage artificial division if it is to achieve progress and prosperity. The Indian Constitution has amply and finally repudiated the concept of a religious State, which is a throw back to medievalism, by guaranteeing the equality of rights of all citizens irrespective of their religion, colour, caste and class.

The national movement in our State naturally gravitates towards these principles of secular democracy. The people here will never accept a principle which seeks to favour the inerests of one religion or social group against another. This affinity in political principles, as well as in past association, and our common path of suffering in the cause of freedom, must be weighed properly while deciding the future of the State.

We are also intimately concerned with the economic well-being of the people of this State. As I said before while referring to constitution-building, political ideals are offen

meaningless unless linked with economic plans. As a State, we are concerned mainly with agriculture and trade. As you know, and I have detailed before, we have been able to put through our "land to the tiller" legislation and make of it a practical success. Land and all it means is an inestimable blessing to our peasants who have dragged along in servitude to the landlord and his allies for centuries without number. We have been able under present conditions to carry these reforms through, are we sure that in alliance with landlord-ridden Pakistan, with so many feudal privileges intact, that the economic reforms of ours will be tolerated. We have already heard that news of our Land Reforms has travelled to the peasants of the enemy-occupied area of our State, who vainly desire like status, and like benefits. In the second place, our economic welfare is bound up with our arts and crafts. The traditional markets for these precious goods, for which we are justly known all over the world, have been centred in India. The volume of our trade, inspite of the dislocation of the last few years, shows this. Industry is also highly important to us. Potentially we are rich in minerals, and in the raw materials of industry; we need help to develop our resources. India, being more highly industrialised than Pakistan, can give us equipment, technical services and materials. She can help us too in marketing. Many goods also which it would not be practical for us to produce here-for instance sugar, cotton, cloth, and other essential commodities-can be got by us in large quantities from India. It is around the efficient supply of such basic necessities that the standard of the man-in-the-street depends.

I shall refer now to the alleged disadvantages of accession to India.

To begin with, although the land frontiers of India and Kashmir are contiguous, an all-weather road-link as dependable as the one we have with Pakistan does not exist. This must necessarily hamper trade and commerce to some extent particularly during the snowy winter months. But we have studied this question, and, with improvements in modern engineering, if the State wishes to remain with India the establishment of an all-weather stable system of communcation, is both feasible and easy. Similarly, the use of the State rivers

as a means of timber transport is impossible if we turn to India, except in Jammu where the river Chenab still carries longs to the plains. In reply to this argument, it may be pointed out that accession to India will open up possibilities of utilising our forest wealth for industrial purposes and that, instead of lumber, finished goods, which will provide work for our carpenters and labourers, can be exported to India where there is a ready market for them. Indeed in the presence of our fleets of timber-carrying trucks, river-transport is a crude system which inflicts a loss of some 20% to 35% in transit.

Still another factor has to be taken into consideration. Certain tendencies have been asserting themselves in India which may in the future convert it into a religious State wherein the interests of Muslims will be jeopardised. This would happen if a communal organisation had a dominant hand in the Government, and Congress ideals of the equality of all communities were made to give way to religious intolerance. The continued accession on Kashmir to India should, however, help in defeating this tendency. From my experience of the last four years, it is my considered judgement that the presence of Kashmir in the Union of India has been the major factor in stabilising relations between the Hindus and Muslims of India. Gandhiji was not wrong when he uttered words before his death which paraphrase, "I lift up mine eyes into the hills, from whence cometh my help."

As I have said before, we must consider the question of accession with an open mind, and not let our personal prejudices stand in the way of a balanced judgement. I will now invite you to evaluate the alternative of accession to Pakistan.

The most powerful argument which can be advanced in her favour is that Pakistan is a Muslim State, and, big majority of our people being Muslims the State must accede to pakistan. This claim of being a Muslim State is of course only a camouflage. It is a screen to dupe the common man, so that he may not see clearly that Pakistan is a feudal State in which a clique is trying by these methods to maintain itself in power. In addition to this, the appeal to religion constitutes a sentimental and a wrong approach to the question. Sentiment has its own place in life but often it leads to irrational action. Some argue,

as supposedly natural corollary to this, that on our acceding to Pakistan our annihilation or survival depends. Facts have disproved this, Right-thinking men would point out that Pakistan is not an organic unity of all the Muslims in this sub-continent. It has on the contrary, caused the dispersion of the Indian Muslims for whose benefit it was claimed to have been created. There are two Pakistan at least a thousand miles part from each other. The total population of Western Pakistan which is contiguous to our State, is hardly 25 million, while the total number of Muslims resident in India is as many as 40 million. As one Muslim is as good as another, the Kashmiri Muslims if they are worried by such considerations should choose the forty millions living in India.

Looking at the matter too from a more modern political angle religious affinites alone do not and should not normally determine the political alliance of States. We do not find a Christian bloc, a Buddhist bloc, or even a Muslim bloc, about which there is so much talk nowadays in Pakistan. These days economic interests and a community of political ideals more appropriately influence the policies of States.

We have another important factor to consider, if the State decides to make this the predominant consideration. What will be the fate of the one million non-Muslims now in our State ? As things stand at present, there is no place for them in Pakistan. Any solution which will result in the displacement or the total subjugation of such a large number of people will not be just or fair, and it is the responsibility of this House to ensure that the decision that it takes on accession does not militate against the interests of any religious group.

As regards the economic advantages, I have mentioned before the road and river links with Pakistan. In the last analysis, we must however remember that we are not concerned only with the movement of people but also with the movement of goods and the linking up of markets. In Pakistan there is a chronic dearth of markets for our products. Neither, for that matter, can she help us with our industrialisation, being herself industrially backward.

On the debit side we have to take into account the reactionary character of her politics and State policies. In Pakistan we should remember that the lot of the States' subjects has

not changed and they are still helpless and under the heel of their Rulers, who wield the same unbridled power under which we used to suffer here. This clearly runs counter to our own aspirations for freedom.

Another big obstacle to a dispassionate evaluation of her policies is the lack of a constitution in Pakistan. As it stand at present, this State enjoys the unique position of being governed by a Constitution enacted by an outside Parliament which gives no idea whatsoever of the future shape of civic and social relations. It is reasonable to argue that Pakistan cannot have the confidence of a freedom-loving and democratic people when it has failed to guarantee even fundamental rights of its citizens. The right of self-determination for nationalities is being consistently denied and those who fought against Imperialism for this just right are being suppressed with force. We should remember Badshah Khan and his comrades who laid down their all for freedom, also Khan Abdus Samad Khan and other fighters in Baluchistan. Our national movement in the State considers this right of self-determination inalienable, and no advantage, however great, will persuade our people to forego it.

The third course open to us has still to be discussed. We have to consider the alternative of making ourselves an Eastern Switzerland, of keeping aloof from both States but having friendly relations with them. This might seem attractive in that it would appear to pave the way out of the present deadlock. To us as a tourist country it could also have certain obvious advantages, but in considering independence we must not ignore practical considerations. Firstly, it is not easy to protect sovereignty and independence in a small country which has not sufficient strength to defend itself on our long and difficult frontiers boarding so many countries. Secondly we must have the goodwill of all our neighbours can we find powerful guarantors among that to pull together always in assuring us freedom from aggression? I would like to remind you that from August 15 to October 22, 1947 our State was independent and the result was that our weekness was exploited by the neighbour with invasion. What is the guarantee that in future too we may not be victims of a similar aggression.

I have now put the pros and cons of the three alternatives

before you. It should not be difficult for men of discrimination and patriotism gathered in this Assembly to weigh all these in the scales of our national good and pronounce where the true well being of the country lies in the future.

123. An Act further to amend the Jammu and Kashmir Constitution Act, 1996. Act No. XVII of 2008.

Whereas it is expedient further to amend the Jammu and Kashmir Constitution Act, 1996, with a view to bring it in accord with the spirit of Proclamations dated 5th March 1948, 20th June 1949 and 20th April 1951 and the changes brought about in the actual governace of the State, in the manner hereinafter appearing:

Now, therefore, in exercise of the powers reserved under Section 5 of the J&K Constitution Act, 1996, read with the Proclamation issued by His Highness and published in the Extraordinary issue of the Government Gazette, dated 7th Har 2006, Yuvaraj Shree Karan Singh ji Bahadur is pleased to enact as follows:

Short title and Commencement .... (1) This act may be called the Jammu and Kashmir Constitution (Amendment) Act, 2008. (2) It shall come into force at once,

Amendment of section 4, Act XIV of 1996. 2: In Section 4 of thc Jammu and Kashmir Constitution Act 1996 (hereinafter referred to as the 'said act') for the words "except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Highness", the words "on the advice of the Council except in so far as may be otherwise provided by or under this Act and except in regard to those matters enumerated in List I in the Seventh Schedule to the Constitution of India with respect to which the Parliament of India has power to make law for the State" shall be substituted.

Omission of section 5, Act XIV of 1996. 3: Section 5 of the said Act shall be omitted.

Amendment of section 6, Act XIV of 1996.4: In section 6 of the said Act for the words and figures "Subject always to the provision of sections 4 and 5 subject also to such rules of business and allocation of portfolios and such other directions as to consultations with or reports to and confirmation by His Highness on special matters as His Highness may give from time to time by general or special orders in that behalf", the words "Subject to the Proivsions of this Act" shall be substituted.

Substitution of section 7, Act XIV of 1996. 5: For section 7 of the said Act, the following section shall be substituted, namely:

"Constitution of the Council-7. The Council shall consist the Prime Minister appointed by His Highness and such other Ministers of the State as His Highness may appoint on the advice of the Prime Minister. The Prime Minister and other Ministers shall be collectively responsible to the Legislative Assembly of the State. The Prime Minister shall be the President of the Council."

Amendment of section 9, Act XIV of 1996.6: In section 9 of the said Act, for the words "The Prime Minister may with the previous sanction of His Highness", the words "The Council may" shall be substituted.

Insertion of new sections 9-A and 9-B in Act XIV of 1996.7: After section 9 of the said Act, the following sections shall be inserted namely:

Appointment of Deputy Ministers—9-A:

(1) His Highness may on the advice of the Prime Minister appoint Deputy Ministers to work in such Ministeries as the Council may consider necessary.
(2) The Deputy Ministers shall be selected from amongst the members of the Legislative Assembly.
(3) The Deputy Ministers before entering on the duties of the office shall take an oath of office before the Prime Minister in the form set out in Schedule I.

Salaries of Ministers and Deputy Ministers—9-B:

(1) The salaries and allowances of Ministers shall be such as the Legislative Assembly may from time to time by Act determine and until the Legislative Assembly so determines, Ministers shall draw such salaries and allowances as they were drawing immediately before the commencement of the Legislative Assembly.

(2) The salaries and allowance of Deputy Ministers shall be such as may be determined by the Legislative Assembly from time to time and until the Legislative Assembly so determines, the salaries and allowances of Deputy Ministers shall be as set out in Schedule II.

(3) Amendment of section 10, Act XIV of 1996.8: After subsection (3) of section 10 of the said Act the following sub-section shall be added namely:

(4) The Council may make rules not inconsistant with this Act is regard to the duties of the Advocate General.

Omission of section 12, Act XIV of 1996.9: Section 12 of the said Act shall be omitted.

Substitution of words "Legislative Assembly" for the words "Praja Sabha" in part III, Act XIV of 1996. 10. In Part III of the said Act, for the words "Parja Sabha" wherever they occur, the words "Legislative Assembly" shall be substituted.

Substitution of section 13, Act XIV of 1996.11: For section 13 of the said Act, the following section shall be substituted namely:

"Legislature : 13

(1) The Legislature of the State shall consist of His Highness and a House to be known as the Legislative Assembly.

(2) Notwithstanding anything contained in this Act, the powers of the Legislative Assembly under this Act shall, until other provision is made by or in accordance with a law made by the Constituent Assembly set up under the Proclamation dated 20th April 1951, be exerciseable by the said Constituent Assembly and re-

ferences in this Act to the Legislative Assembly shall be construed accordingly.

(3) The Legislative Assembly may make rules and standing orders, subject to the provisions of; this Act for regulating their procedure and conduct of their business.

(4) Until rules are made under sub-section (3), the rules of Procedure and standing orders in force in relation to the the Praja Sabha shall apply to the Legislative Assembly, subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly."

Omission of section 14, Act XIV of 1996. 12: Section 14 of the said Act shall be omitted.

Substitution of section 15, Act XIV of 1996. 13: For section 15 of the said Act, the following section shall be substituted, namely:

"Summoning of the Legislative Assembly: 15

(1) The Legislative Assembly shall be summoned to meet at least twice in a year and more than six months shall not intervence between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) Subject to the Provisions of this section, the Speaker of of the Legislative Assembly may from time to time :

(a) summon the Legislative Assembly to meet at such time and place as he thinks fit;

(b) prorogue the Legislative Assembly."

Amendment of section 16, Act XIV of 1996. 14: In section 16 of the said Act.

(i) In clause (b) the words "or any other Minister" shall be omitted, and

(ii) In clause (c) for the words "the President" the word, "the Speaker" shall be substituted.

Amendment of section 17, Act XIV of 1996. 15: In section 17 of the said Act, for the words "the President" the words "the Speaker" shall be substituted.

Substitution of section 19, Act XIV of 1996. 16: For section 19 of the said Act, the following section shall be substituted, namely :

"Speaker and Deputy Speaker : 19.

(1) The Legislative Assembly may choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and so often as the office of the Speaker or Deputy Speaker becomes vacant, the Assembly may choose another member to be the Speaker or the Deputy Speaker, as the case may be.

(2) Until the Legislative Assembly elects a Speaker and Deputy Speaker, as provided in sub-section(1), the President of the Constituent Assembly shall act as Speaker and Deputy Speaker of the Legislative Assembly."

Amendment of section 20, Act XIV of 1966.17: In section 20 of the said Act:

(i) sub-section (1) shall be omitted ;

(ii) sub-section (2) shall be renumbered as sub-section (i) and in the sub-section as so renumbered.

(a) for the words "Deputy President" the words "Deputy Speaker" and for the words "the President", wherever they occur, the words "the Speaker" shall be substituted; and

(b) the words "with the approval of the Council" shall be omitted; and

(ii) for sub-section (3) the following sub-section shall be substituted, namely :

"(2) During the temporary absence of the Speaker and the Deputy Speaker from a meeting of the

Legislative Assembly such person shall act a Speaker as may be determined by the Rules of Procedure of the Legislative Assembly or if no such person is present such other person as may be determined by the Assembly".

Amendment of section 21, Act XIV of 1996. 19: In section 2 of the said Act, for the words "Deputy President" the words "the Speaker or the Deputy Speaker" shall be substituted.

Substitution of section 22, Act XIV of 1996. 19: For section 22 of the said Act, the following section shall be substituted, namely :

"Parliamentary Secretaries-22.

(1) The Council may appoint from among the members of the Legislative Assembly as many Parliamentary Secretaries for such period and on such term and conditions as the Council may think fit.
(2) The Council may make rules not inconsistant with the provisions of this Act in regard to the duties of Parliamentary Secretaries".

Substitution of section 23, Act, XIV of 1996. 20: For section 23 of the said Act, the following section shall be substituted namely :

"Legislative power of the Legislative Assembly-23, Subject to the provisions of the Act the Legislative Assembly may make laws for the whole or any part of the State and for the State subjects, wherever they may be, except in regard to those matters enumerated in List I in the seventh Schedule to the Constitution of India with respect to which the Parliament of India has power to make laws for the State."

Omission of section 24, Act XIV of 1996. 21: Section 24 of the said Act shall be omitted.

Amendment of section 25, Act XIV of 1996. 22: In Section 25 of the said Act:

(i) in sub-section (1) for the word "President" the word "Speaker" shall be substituted, and

(ii) in sub-section (3) for the words "one fifth", wherever they occur, the words "one fourth" shall be substituted.

Omission of Section 26, 27, and 28, Act XIV of 1996. 23: Sections 26, 27 and 28 of the said Act shall be omitted.

Substitution of section 30, Act, XIV of 1996. 24: For Section 30 of the said Act, the following section shall be substituted, namely :

"Allowances and Salaries: 30. The Speaker, the Deputy Speaker and the members of the Legislative Assembly shall receive such salaries and allowances as may be determined by an act of the Legislative Assembly and until that Act is passed such salaries and allowances shall be as set out in Schedule III."

Amendment of section 31, Act XIV of 1996. 25: In sub-section (3) of section 31 of the said Act, for the words "In English" the words "both in Urdu and English shall be substitututed.

Amendment of section 32, Act XIV of 1966. 26: in section 32of the said Act, Act, the proviso shall be omitted.

Substitution of section 38, Act XIV of 1996. 28: For section 38 of the said Act, the following section shall be substituted, namely:

"Expenditure charged on the revenues of the State—43. The following expenditure shall be the expenditure charged on the revenues of the State:

(a) Allownnces of His Highness and other expenditure relating to his office;

(b) Debt charges for which the State is liable including interest, sinking fund charges and redemption charges and other expenditure relating to the raising of loans and service redemption of debt;

(c) Salaries, allowances and pensions payable to or in

respect of the Judges of the High Court and the Members of His Highness Board of Judicial Advisers;

(d) Expenditure relating to Constituent Assembly and its staff;

(e) Any sums required to satisfy and judgement decree or award of any court or arbitral tribunal:

(f) Any other expenditure declared by this Act or any Act of the Legislative Assembly to be so charged."

Amendment of section 45, Act XIV of 1996.32: In Section 45 of the said Act;

(i) at the end of sub-section (1) fullstop shall be deleted, and the following words shall be added, namely:
"but nothing in this sub-section shall be construed as preventing the discussion in the Legislative Assembly of any of these estimates."

(ii) Provisios to sub-section (2) shall be omitted.

Substitution of section 46, Act XIV of 1996.33: For section 46 of the said Act, the following section shall be substituted, namely:

"Supplementary Expenditure.—46: If in respect of any financial year a further expenditure from the revenues of the State becomes necessary over and above the expenditure authorised for that year the Council shall have the power to authorise that expenditure. A statement of the Legislative Assembly alongwith the financial statement for the following year and the provisions of the preceding sections shall have effect in relation to that statement of the expenditure as they have in relation to the annual financial statement."

Amendment of section 48, Act XIV of 1966. 34: In sub-section (b) of section 48 of the said Act for the words "one or more Judges" the words "two or more other Judges" shall be substituted.

Amendment section 49, Act XIV of 1996.35: In section 49 cf the said Act, for the figures "55" the word "Sixty" shall

be substituted and the first proviso shall be omitted.

Amendment of section 51, Act XIV of 1996. 36: In section 51 of the said Act for the words "British India" wherever they occur, the word "India" shall be substituted.

Substitution of section 72. Act XIV of 1996. 37: For section 72 of the said Act the following section shall be substituted, namely;

> "Prerogative:—72. Nothing in this Act shall derogate from the prerogative of His Highness to grant pardons reprieves, respites of remissions of punishment."

Amendment of section 75, Act XIV of 1996. 38: In section 75 of the said Act, the words "Subject to the provisions of Section 5" shall be omitted.

Omission of sections 77 and 78, Act XIV of 1996. 39 : Sections 77 and 78 of the said Act shall be omitted.

124. Memorandum submitted by Shri Cheewang Rigzin, President Buddhist Association, Ladakh to the Prime Minister of India on behalf of the people of Ladakh.

Sir,

On the eve of the grant of responsible Government to the people of Kashmir by the Maharaja, we the Buddhists of Ladakh and adjoining areas presented to him through our representatives in the Praja Sabha, a memorial, a copy of which was submitted to you for your information and consideration. This memorial, which was prompted by our apprehensions for our future, based on our bitter experience of nearly a century and a quarter, embodied the following proposals:

1. That he should govern us directly through legislative and administrative machinery, proposals for which would be submitted by us at his command.
2. That our homeland amalgamated with the Hindu-majority parts of Jammu should form a separate province in

which adequate safe-guards should be provided for our distinctive rights and interests.

3. That we should be permitted to re-unite politically with Tibet of which land we form part and parcel for all purpose but political.
4. That we should be permitted to join East Punjab.

Proposal (1) originated in our respect for the obligation we owed to the ruler in view of the relation which bound us to him from the day of the conquest of our land by his great grand-father.

Proposal (2) emanated from the fact that we desired to see nothing more of the administrators from Kashmir, who had mostly governed us during the past to our utter ruin, that our cultural kinship with the Hindus encouraged us to expect a sympathetic regard for our interests and an assured future in a Hindu-majority province, and finally that historical causes bound us to the people of Jammu and not to those of Kashmir, for it was the Jammu Dogras who conquered Ladakh for Maharaja Gulab Singh in 1834, while Kashmir came into his possession in 1846, twelve years latter.

All things considered, however, proposals No. 1 and 2 were concessions to treaty obligations imposed on us by the Dogra conquest while proposal No. 3 which would come into force on the failure of (1) and (2) was put forward because it is the only panacea for all our ills, the only guarantee for our future progress and development.

No. 4 was a proposal of despair, for though we are in and of Tibet, the political and economic system of that land-our racial and spiritual home-are too archaic, antiquated and un-progerssive to suit us. We rather wish that India should exert her wholesome influence in the political and economic fields on her (Tibet) at the present day even as she shaped and moulded her spiritual and cultural life in ancient times.

The Maharajadhiraj has so far vouchsafed to us no reply and we have taken this silence of His Highness to imply the relinquishment by him of his position as a party in respect of proposals (1) and (2), a tacit recognition of our right to choose our path independent of him. We have given most anxious thought to this grave problem and after mature deliberation

arrived at the decision that we should straightway merge with India.

That we have the right to determine our own future apart from other communities and people inhabiting the state and that we cannot be affected by the result of the forthcoming plebiscite in the event of its being favourable to Pakistan is evident from the following facts :

1. We are a separate nation by all the tests-race, language, religion, culture determining nationality. The only linkconnecting us with the other people of the State being the bond of common ruler. If the Indian National Congress could persuade itself to recognise the Muslims of India as a separate nation although they had so much in common with the other elements of the Indian population, the Government of India should have no hesitation in recognition what is patent and incont rovertible fact in our case.
2. Sheikh Mohammad Abdullah built up his case on the validity of the Treaty of Amritsar. This treaty bears upon the territory of Kashmir only so while the ruler has consented to the transfer of his sovereign power in favour of all his people, S.Mohammad Abdulla and the people of Kashmir can, through this transference, manage the affairs of their country as they will. But they have not the power to appropriate against their will a people, a separate nation, whom a separate treaty the result of the war of 1834 twelveye ars anterior to the treaty of Amritsar-bound to the ruler in a special relationship, in which, the people of Kashmir, who came into the picture later, naturally, did not figure at all.
3. The right of self-determination claimed by us cannot be claimed with equal force by the people of Baltistan including Skardu the parts of Kargil tehsils predominantly peopled by Muslims, as they are connected by ties of religion with the majority community in Jammu and Kashmir, nor by the people of Gilgit who came under Dogra rule through conquest after the annexation of Kashmir and whom not only identity of religion but

of race as well binds to the majority community of Jammu and Kashmir. It may be added that at the time of the conquest of Ladakh by Zorawar Singh, the entire area comprised under the Tehsils of Leh and Kargil acknowledged the suzerainity of our Raja, while Baltistan had several Rajas of its own.

In case the result of the plebiscite is favourable to India, we simply go a step further than other people of the State in seeking a closer union with that great country and in case it is otherwise, our verdict stands clear and unchallengable. When we have decided to cut ourselves from the State itself, the question of our forming part of Pakistan cannot arise at all.

We have indeed made up our minds to join India; but what is our decision worth until India is prepared to accept it ? We certainly make the offer for our own advantage; we see in our merger with India the only hope of our salvation. But India, too, will not be loser by this arrangement. The Tehsil of Leh alone covers 23,000 Sq. miles and, if we add to it the other areas predominantly inhabited by Buodhs, viz. Zanskar Bodhkharbo, Mulbek, Fukar, Darcik Garcon, in Kargil Tehsil and Padar in Kishtwar,,the total acquisition of territory to India not probably measure less than 33,000 Sq. miles. It is true that the whole of this area is undeveloped and most of it at present barren. But it must also be remembered that its economic potentialities are tremendous and in the hands of a great country like India it is bound to be transformed into a smiling garden and a source of immense wealth and power. Its strategic and commercial importance too cannot be underrated. The Tehsil of Leh has Tibet and China among its neighbours and the town of Leh is the nerve centre of Central Asian trade.

The British Indian Government took Gilgit on lease from the Maharaja for military reasons for no consideration in return. The Indian Government has already incurred an expense of crores of rupees for thc protection of Kashmir, not to speak of the great sacrifice of military personnel which the process has involved. It is clearly impossible for Kashmir to liquidate this colossal debt which is daily growing in magnitude.

Would this not be an additional reason for India to take over the Buddhist homelands hereby offered by the Buddhists themselves for its acceptance ? Though our right of self-determination stands intrinsically unassailable, we are willing to be considered as the instrument of redemption of the people of Kashmir, heretofore our fellow citizens, if that purpose can be automatically served by India's acceptance of our offer.

' There is nothing in our offer which is in any way incompatable with the high idealism which characterises India's international policy. We might even say in positive terms that it is perfectly consistent with it, for has not India repeatedly declared that it stands for the right of self-determination for all nations and are we not a nation whose right of self-determination it should uphold and to whom it should extend the protection it seeks ?

Tibet is a cultural daughter of India and we of lesser Tibet seek the bosom of that gracious mother to receive more nutriment for growth to our full stature in every way. She has given us that we prize above all other things-our religion and culture and it is the experience of having been the recipients of such precious gift which encourages us to ask for more. The Asoka wheel on her flag-symbol of goodwill for all humanity and her concern for her cultural children calls us irresistably. Will the great mother refuse to take to her arms one of her weakest and most forlorn and distressed children a child whom filial love impels to respond to the call ?

Sir, the absence of a reply to our previous references on the subject of our future has depressed us greatly. We beseech you with all earnestness to be so kind as to vouchsafe a line in reply to this our last prayer on the subject.

Before we close, we wish to make it clear that our desire to be absorbed into the body politic of India does not imply any reflection on the present National Government of Kashmir. Far from it, we have no hesitation to say that we have full confidence in the present Prime Minister, S. Mohammad Abdullah. The step we have taken has been dictated solely by the instinct of self-preservation which governs all men and nations alike, as also by the desire to find swiftly deliverance from the misery, sqalor and stagnation in which we have been sunk for generations past.

125. Interim Report of the basic Principles Committee, 1952.

Third Session,
10th June, 1952.

While proceeding with the task assigned to it, the Basic Principles Committee has felt it imperative to seek a clear directive from the Costituent Assembly with regard to the basic character and shape of the future constitution of the Jammu and Kashmir State. In order to determine its broad framework it is essential to know whether it will be based on the total application of the principles of democracy or whether the existing system of constitutional monarchy should continue. This naturally involves an immediate consideration of the future status of the Ruling dynsty of the Jammu and Kashmir State and only a decision on this fundamental issue will enable the Committee to proceed further with the task of finalising the principles of the draft constitution.

The Committee has carefully examined the nature of the title and claim of the Ruling Dynasty of the Jammu and Kashmir State, which it derived from the Treaty of 1846. The Committee has no doubt that the Treaty was the natural consequence of the British Imperial policy in the Indian subcontinent which perpetuated and intensified feudal and autocratic rule in certain territories of the sub-continent.

When the popular upsurge for independence compelled the British Government to withdraw from the sub-continent, the Paramountcy exercised by it over these States lapsed and it was obvious that the iniquitous relationships which the British Government had entered into with the Indian Princes would automatically terminate. But the failure of the British Government to recognise a status of equality and independence on par with status conferred upon the people of the Provinces ruled by it directed, created an anamolous situation. While in the rest of India, sovereignty was restored to the people, in the Indian states, it continued to be vested in an individual who was all along functioning under the protection and suzerainty of the British Government.

The people of our State, along with those of other Indian States, resisted this relationship which condemned them to bondage and feudal exploitation. Their resentment found expression in their organised struggles against this unjust and discriminatory treatment meted out to them. They sought repudiation of this ambiguous constitutional arrangement and demanded the right of self-determination for themselves, prompted by the same urges that had moved the people in other parts of India.

The outmoded and anachronistic character of the dynastic rule was brought to light sharply by the crisis with which the State was faced in 1947. The general feeling of resentment against this autocratic system had corroded it to such an extent as left no doubt in its futility and incompetence to render elementary functions of guaranteeing the security of life and property of the citizens in times of a severe crisis. It was, therefore, natural that this unpopular system should yield place to a representative form of Government; but the nature and magnitude of the emergency facing our State made it impossible to effect any drastic changes in the constitutional set up during these critical times. The peoples representatives while tackling the difficult task of administration under stress of abnormal condition had to function within the framework of the existing constitutional set up.

There was a major change in the situation when in March 1948, the Maharaja had to entrust the work of day to day administration to a popular Ministry but it was soon obvious that this arrangement could not work smoothly and stood in the way of progress and development. Consequently, the Maharaja who was concious of his erstwhile power and privileges, incapable of any adjustment to the changed conditions, was forced to retire and was succeeded by Yuvaraj Karan Singh, who assumed the functions of a constitutional Ruler acting on the advice and guidance of his Cabinet.

This was obviously an interim arrangement subject to examination and revision by a properly elected body of the people's representatives. Accordingly the Constituent Assembly came into being in October 1951, with sovereign powers.

The Basic Principles Committee feels that the time has come when a final decision should be taken in regard to the institu-

unbounded respect, confidence and esteem of the people.

In view of these considerations the Committee feels that there must be a sense of finality about the decisions in regard to this fundamental issue. Accordingly, the Committee recommends that:

(a) the form of the future constitution of Jammu and Kashmir shall be wholly democratic;
(b) the institution of hereditary Rulership shall be terminated;
(c) the office of the Head of the State shall be elective.

Sd/- S.M. Abdullah.
„ G.M. Bakshi
„ M.A. Beg
„ G.L. Dogra
„ S.L. Saraf
„ D.P. Dhar
„ Piar Singh
„ Harbans Singh
„ Mubarik Shah
„ G.M. Hamdani
„ Mir Qasim
„ Bhagat Ram Sharma
„ Abdul Gani Goni
„ Ram Devi
„ Moti Ram Baigra
„ Ram Piara Saraf
„ Mir Assadullah

126. Resolution moved by Durga Prasad Dhar, 1952.

Third session
12th June, 1952.

RESOLUTION

This Assembly resolves that the recommendations contained in the Interim Report of the Basic Principles Committee as

adopted by the Assembly be implemented and that for this purpose the Drafting Committee be directed to place before this Assembly appropriate proposals in the form of resolution or otherwise, within a period of one month from the date of passing of this resolution.

127. Resolution of the Constituent Assembly pertaining to the Head of the State, 1952.

Fourth Session
20th August, 1952.

RESOLUTION

Whereas this Assembly adopted the recommendations contained in the Interim Report of the Basic Principles Committee presented on the 10th of the June, 1952 ;

And whereas by its resolution, dated the 12th June 1952, this Assembly directed that the recommendations so adopted be implemented and for that purpose charged the Drafting Committee to submit appropriate proposals;

Now, therefore, in pursuance of the resolution dated the 12th June, 1952, and having considered the report of the Drafting Committee, this Assembly resolves:

1. (i) that the Head of the State shall be the person recognised by the President of the Union on the recommendations of the Legislative Assembly of the State;
   (ii) he shall hold office during the pleasure of the President;
   (iii) he may, by writing under his hand, addressed to President, resign his office;
   (iv) subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office.

   Provided that he shall notwithstanding the expira-

tion of his term, continue to hold the office until his successor enters upon his office;

2. that the recommendation of Legislative Assembly of the State in respect of the recognition of the Head of the State specified in sub-para (i) of paragraph I shall be made by election;
3. that the method of election to, qualifications for and all other matters pertaining to the office of the Head of the State shall be prescribed, in the Constitution, and until these are so prescribed, shall be as set out in the rules contained in the schedule annexed to this resolution;
4. that the Head of the State shall be designated as the Sadar-i-Riyasat;
5. that the Sadar-i-Riyasat shall be entitled to such emoluments, allowances and privileges as may be prescribed in the Constitution and pending the framing of the Constitution to such emoluments, allowances and privileges as may be decided by this Assembly by separate resolution;
6. that the Sadar-i-Riyasat shall exercise such powers and perform such functions as may be prescribed in the Constitution to be framed by this Constituent Assembly, and until such Constitution is framed, he shall exercise such powers and perform such functions as have hitherto been exercised by His Highness under the Jammu and Kashmir Constitution Act 1996, as amended by Act No. XVII of 2008;
7. that in the event of the occurrence of a casual vacancy in the office of the Sadar-i-Riyasat by reason of his death, resignation or otherwise, the powers and functions exercisable by the Sadar-i-Riyasat shall until the assumption of office by the newly elected Sadar-i-Riyasat in accordance with the procedure laid down in this resolution, be exercised and performed by the person recommended by the State Government for recognition as Officiating Sadar-i-Riyasat to the President of India; and
8. that this Assembly shall in due course provide a suita-

ble remedy in respect of violation of the Constitution or gross misconduct by the person for the time being holding the office of the Sadar-i-Riyasat.

This Assembly further resolves :

that the Prime Minister of Jammu and Kashmir State is authorized to communicate a copy of this resolution to the Government of India for favour of appropriate action to enable its being given effect to.

128. Report of the Drafting Committee, 1952.

Fourth Session
20th August 1952.

This Assembly unanimously adopted the recommendations contained in the Interim Report of the Basic Principles Committtee with regard to the future Headship of the State on the 12th June, 1952, and directed the Drafting Committee to place before this House appropriate proposals in this behalf within a period of one month. As it was necessary to have corresponding adjustments made in the Indian Constitution, it became essential to have consultations with the Government of India on this subject. Therefore, a Delegation headed by the undersigned, the Chairman of the Drafting Committee, was deputed to Delhi for the purpose.

During the course of consultations, certain other matters cropped up besides the question of the future Headship of the State. All these matters and the agreements arrived at between the Government of India and the representatives of the Kashmir Government have been placed before this House in a statement made by the Leader of the House and have been approved by this Assembly.

It was on account of these consultations at Delhi that the Drafting Committe could not submit its proposals within the period prescribed in the above mentioned resolution of this Assembly, and the Chairman requested you, Sir, for extension

of the time limit in order to complete the task assigned to the Drafting Committee. I am extremely grateful to you, Sir, that you very kindly agreed to put my request before the House.

Accordingly, I now seek the permissian to present this report with the resolution and the schedule attached to it.

Dated:
19th August, 1952.

(Sd.) M.A. BEG
(Sd.) All Members of the Drafting Committee

129. Bill to amend the Constitution Act, 1996.

Be it enacted by the Constituent Assembly as follows :

1. Short title....(1) This Act may be called the Jammu and Kashmir Constitution (Amendment) Act, 2009.
2. It shall come into force on the 17th of November, 1952.
3. Amendment of section 3, Act XIV of 1996....Clause (c) of section 3 of the Jammu and Kashmir Constitution Act, 1996 (herein after referred to as "the said Act") shall be omitted.
4. Substitution of section 4, Act XIV of 1996....For section 4 of the said Act the following section shall be substituted, namely :
5. "Sadar-i-Riyasat...

    1. The Head of the State shall be designated as "Sadar-i-Riyasat".
    2. All rights, authority and Jurisdiction which appertain or are incidental to the Government of the territories of the State of Jammu and Kashmir shall be exercisable by the Sadar-i-Riyasat on the advice of the Council except in so far as may be otherwise provided by or under this Act, and except in regard to those matters enumerated in List I in the Seventh Schedule to the Constitution of India with respect to which the Parliament of India has power to make laws for the State.

3. Election and term of office of the Sadar-i-Riyasat and all other matters pertaining to the office of the Sadar-i-Riyasat shall be regulated in accordance with the Resolution of the Constituent Assembly dated the 21st of August, 1952, which Resolution is set out in Schedule I.
4. Amendment of a number of sections by substitution of "Sadar-i-Riyasat" for "His Highness" in Act XIV of 1996...In Sections 7,8,9....A sub-section (1), no sub-sections (1) and (3), 11, 13 sub-section (1), 16, 17, 31 sub-sections (1) and (2) 38. 43 clause (a), 48 sub-section (b), 49,52,53,57, 58,64 sub-section (1), 67 sub-section (2) and 71 of the said Act, for the words "His Highness" wherever occuring, the words "the Sadar-i-Riyasat" shall be substituted.
5. Amendment of sections 8,9-A, 53 and 71, Act XIV of 1996....In sections 8, 9-A, 53 and 71, for the word and figure "Schedule 1" wherever occuring, the word, figure and letter "Schedule I-A" shall be substituted.
6. Amendment of seetions 37 and 43 (c) heading of section 71 and schedule I, Act XIV of 1996....In sections 37 and 43 clause (c), the heading to section 71 and form C of Schedule I (now to be renumbered as I-A) of the said act for the words "His Highness" "Board of Judicial Advisers" the words "Board of Judicial Advisers" shall be substituted.
7. Addition of new section 46-A, Act XIV of 1996.... After section 46 of the said Act, the following section shall be added, namely :

"46-A votes on account, votes of credit of and exceptional grants.

(1) Notwithstanding anything in the foregoing provisions of this Act, the Legislative Assembly shall have power :

(a) to make any grant in advance in

respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in section 45 for the voting of such grant ;

(b) to make a grant for meeting on unexpected demand upon the revenues of the State when on account of magnitude or the indefinite character of the service the demand cannot be stated with details ordinarily given in an Annual Financial Statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year.

(2) The provisions of section 45 shall have effect in relation to the making of any grant under sub-section (1) as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the Annual Financial Statement.

8. Amendment of section 55, Act, XIV of 1996....In section 55 of the said Act, the words "shall run and be in the name and style of His Highness and" shall be omitted.

9. Amendment of section 66, Act XIV of 1996....In section 66 of the said Act, for the words "the commands of His Highness" the words "orders of the Sadar-i-Riyasat" shall be substituted and for the words "His Highness" where they occur for the second time the words "the Sadar-i-Riyasat" shall be substituted.

10. Amendment of section 72. Act XIV of 1996....In section 72 of the said Act :

(i) the heading "Prerogative" to the section shall be omitted; and

(ii) for the words "Prerogative of His Highness"

the words "Powers of the Sadar-i-Riyasat" shall be substituted.

11. Substitution of new section for section 73, Act XIV of 1996....for section 73 of the said Act, the following section shall be substituted namely:...

"Revenues of the Jammu and Kashmir State-73... All revenues and public monies raised or received by or on behalf of the Jammu and Kashmir Government shall be received for and credited to the account of the Jammu and Kashmir State.

Explanation: The expression "revenues" includes :

(a) all fines and penalties incurred by the sentence or order of any court of justice in the State, and all forfeitures, for crimes, of any movable or immovable property in the State; and
(b) all movable and immovable property in the State escheating or lapsing for want of an heir or successor and all property in the State devolving as bona vacantia, for want of a rightful owner."

12. In section of a new Schedule in Act XIV of 1996:

Schedule I of the said Act shall be renumbered as Schedule I-A and before the said Schedule as so renumbered, the following Schedule shall be inserted namely:

1. Qualifications .... No person shall be eligible for elections to the office of the Sadar-i-Riyasat, unless he :

(a) is a State Subject of Class I as defined in the State Subject Definition Notification. No. I-L/84, dated 20th April, 1927;
(b) has completed the age of 21 years on the date

of filing the nomination paper; and

(c) is not subject to any of the disqualifications specified in rule 4 of the Jammu and Kashmir Constituent Assembly Election (Part I) Rules, 2008, for being chosen as a member of the Constituent Assembly.

2. The Sadar-i-Riyasat shall not be a member of the Legislative Assembly of the State, of if a member of the Legislative Assembly of the State, he shall be deemed to have vacated his seat in the House on the date he enters upon his office as the Sadar-i-Riyasat.
3. The Sadar-i-Riyasat shall hold no other office of profit.
4. Method of Election...(i) When election to the office of the Sadar-i-Riyasat becomes necessary, the Speaker of the State Legislative Assembly shall fix time and date for the holding of the election and shall cause a notice thereof to be sent to every member.

(1) At any time before noon on the date preceding the date so fixed, any member of the State Legislative Assembly may nominate another person for election by delivering to the Speaker or any officer authorised by the Speaker in this behalf, a nomination paper in the form prescribed in the Annexure to this Schedule signed by himself as proposer and by another member as seconder.

(2) Any person who has been so nominated may withdraw his candidature in writing addressed to the Speaker at anytime before the Assembly proceeds to hold the election.

(3) At the time fixed for selection under sub-clause (i), the Speaker or in his absence the person presiding shall read out to the Assembly the names of the persons who have been duly nominated and have not withdrawn their candidature together with those of their proposers and seconders, and, if there is only one such candidate, shall declare him to be duly elected. If there is more

than one such candidate, the Assembly shall proceed to elect the Sadar-i-Riyasat by ballot.

(4) Where there are only two candidates for election, the candidate who obtains at the ballot the larger number of votes shall be declared elected. If they obtain an equal number of votes, the Speaker or in his absence the person presiding shall exercise his casting vote and the person in whose favour such vote is cast shall be declared elected.

(5) Where more than two candidates have been nominated and at the first ballots no candidate obtain more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election, and balloting shall proceed, the candidate obtaining the smallest number of votes at each ballot being excluded from the election, until one candidate obtains more votes than the remaining candidates, or than the aggregate votes of the remaining candidates, as the case may be, and such candidate shall be declared elected.

(6) Where at any ballot any of three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under sub-clause (6), the determination, as between the candidates whose votes are equal, of the candidate who is to be excluded shall be by the casting vote of the Speaker or in his absence of the person presiding.

(7) The Prime Ministers of the State shall communicate the name of the person duly elected by the Assembly as the Sadar-i-Riyasat to the President of India for being recognised as the Sadar-i-Riyasat.

(8) Oath .... The Sadar-i-Riyasat shall, before entering upon his office, make and subscribe in the presence of Chief Justice of the State High Court or in his absence any judge of the High Court available on oath or affirmation in the following form, namely :

> "I, A. B., swear in the name of God/solemnly affirm that I will faithfully execute the office of the Sadar-i-Riyasat, Jammu and Kashmir and will

to the best of my ability preserve, protect and defend the Constitution of the State as by law established and that I will devote myself to the service and well being of the people of the State."

130. Sheikh Mohammad Abdullah's Statement to the Constituent Assembly on Delhi Agreement, 11th August, 1952.

(Extract)

I crave permission to make a statement before the House in regard to the constitutional relationship between the Jammu and Kashmir State and the Indian Union. As the Hon'ble Members are aware, during the last session of the Constituent Assembly, the Basic Principles Committee had submitted a report making certain specific recommendations about the future Head of the State. The House, while accepting these recommendations, had charged the Drafting Committee to present for the consideration of the Assembly, a draft resolution incorporating the proposed principles for the election of the Head of the State. The Drafting Committee will, no doubt, submit its report to the House during this session.

Since the changes proposed by this Assembly involved corresponding adjustments in the Indian Constitution, the Government of India desired that it should have time to discuss with our representatives other matters pertaining to the constitutional relationship of our State with the Union. During the last stage of these discussions, it became necessary for me and some of my other colleagues in the Government to participate in the talks. I am now in a position to inform the House that certain broad principles have been laid down and certain decisions have been tentatively arrived at between the two Governments.

x x x x x x x

The basis of our relationship with India is the Instrument of Accession which enabled our State to enter into a Union with India. In accordance with the terms of the Instrument, certain

powers were transferred to the Centre. The principal matters specified for this purpose in respect to which the Dominion Legislature could make laws for this State were :

(a) Defence,
(b) External Affairs, and
(c) Communications.

This arrangement involved a division of sovereignty which is the normal feature of a Federation. Beyond the powers transferred by it to the Dominion, the State enjoyed complete residuary sovereignty.

These terms of the association of our State with the Dominion of India were maintained; and, subsequently, when the Constituent Assembly of India was charged with the task of framing a Constitution, this over-riding consideration was kept in view in determining the position of this State in the proposed Constitution. Earlier to this, it had been agreed between the two Governments that "in view of the special problems arising in respect of this State and the fact that the Government of India have assured its people that they would themselves finally determine their political future", a special position should be accorded to Jammu and Kashmir in the future Constitution so that a limited field of the Union Powers over the State is ensured. Four representatives were nominated from the Jammu and Kashmir State to the Constituent Assembly of India. These representatives participated in the deliberations of the Constituent Assembly of India at a time when the bulk of the Indian Constitution had already been adopted. It was at this stage that the constitutional position of this State was determined in the Constitution of India. The representatives of the Jammu and Kashmir State reiterated their view that our association with India should be based on the terms of the Instrument of Accession. It was at this stage that the constitutional position of the State was determined in the Constitution of India. The representatives of the Jammu and Kashmir State reiterated their view that our association with India should be based on the terms of the Instrument of Accession. It was also made clear that while the accession of the Jammu and Kashmir State with India was complete in fact and law to the

extent of the subjects enumerated in this Instrument, the autonomy of the State with regard to all other subjects outside the ambit of the Instrument of accession should be preserved.

x x x x x x x

Since a good deal of confused thinking and uninformed criticism is indulged in by some interested people, I would like to point out here that the Constitution has confined the scope and jurisdiction of the Union powers to the terms of the Instrument of accession with the proviso that they may be extended to such other matters also as the President may by order specify with the concurrence of the Jammu and Kashmir Constituent Assembly. The special problems facing the State were thus taken into account and under the Constitution the relationship approximated to that subsisting under the Instrument of accession.

The Constitution of the Indian Union, therefore, clearly envisaged the convening of a Constituent Assembly for the Jammu and Kashmir State which would be finally competent to determine the ultimate position of the State in respect of the sphere of its accession which would be incorporated as in the shape of permanent provisions of the Constitution.

x x x x x x x

The Hon'ble Members are aware that as the leader of the National Conference party, I indicated in my inaugural address the scope of the decisions which I felt the Constituent Assembly would have to take. I listed the four main issues as pertaining to the main functions of the Assembly, viz., the future of the Ruling Dynasty, payment of compensation for the land transferred to cultivators under the Big Landed Estates Act, Ratification of the State's Accession to India as well as the framing of a Constitution for the State. While discussing these issues in my address to this House, I had given clear indications of my party's views in regard to them. I had also an occasion to place my point of view on these issues before the representatives of the Government of India and I had the satisfaction that they approved of it.

When the Constituent Assembly commenced its labours, it had to tackle these issues in course of time. It took decisions in regard to payment of compensation to landlords and it came to the conclusion that no compensation was justified.

The Constituent Assembly has, at present, under its consideration the future of the Ruling Dynasty. In this connection the Basic Principles Committee recommended that the institution of hereditary rulership in the State should be abolished and in future the office of the Head of State should be elective. While accepting the recommendations of the Basic Principles Committee, this Assembly charged the Drafting Committee to place before this House appropriate proposals for the implementation of these recommendations.

As I said in the beginning of my statement, such a fundamental decision involved corresponding adjustments in the Indian Constitution and in order to finalise the position in respect of this issue and other matters pertinent to it, I and my colleagues had discussions with the representatives of the Government of India as a result of which we arrived at some tentative agreement, the details of which I wish to place before the House.

The Government of India held the view that the fact that the Jammu and Kashmir State was constituent unit of the Union of India led inevitably to certain consequences in regard to some important matters, namely:

(a) Residuary Powers,
(b) Citizenship,
(c) Fundamental Rights,
(d) Supreme Court of India,
(e) National Flag,
(f) The President of India,
(g) The Headship of the State,
(h) Financial Integration,
(i) Emergency Provisions, and
(j) Conduct of elections to Houses of Parliament.

Permit me, Mr. President now to deal with each one of these items and also the agreements arrived at between the Jammu and Kashmir Government and the Government of

India in relation to them.

RESIDUARY POWERS

It was agreed that while under the present Indian Constitution, the Residuary Powers vested in the Centre in respect of all the States other than Jammu and Kashmir, in the case of our State, they rested in the State itself. This position is compatible with Article 370 of the Indian Constitution and the instrument of Accession on which this article is based. We have always held that the ultimate source of sovereignty resides in the people. It is, therefore, from the people that all powers can flow. Under these circumstances, it is upto the people of Kashmir through this Assembly to transfer more powers for mutual advantage to the custody of the Union Centre.

CITIZENSHIP

It was agreed that in accordance with Article 5 of the Indian Constitution persons who have their domicile in the Jammu and Kashmir State shall be the citizens of India. It was further agreed that the State legislature shall have power to define and regulate the rights and privilages of the permanent residents of the State, more especially in regard to acquisition of immovable property, appointments to services and like matters. Till then the existing State law would apply. It was also agreed that special provision should be made in the laws governing citizenship to provide for the return of those permanent residents of Jammu and Kashmir State, who went to Pakistan in connection with the disturbances of 1947 or in fear of them as well as of those who had left for Pakistan earlier but could not return. If they returned, they should be entitled to the rights, and privileges and obligations of citizenship.

There are historic reasons which necessitate such constitutional safeguards as for centuries past, the people of the State have been victims of exploitation at the hands of their well-to-do neighbours. The Hon'ble Members are perhaps aware that in the late twenties, the people of Jammu and Kashmir agitated for the protection of their bonafide rights against the superior competing interests of the non-residents of the State.

It was in response to this popular demand that the Government of the day promulgated a Notification in 1927 by which a strict definition of the term "State Subject" was provided. I am glad to say that the Government of India appreciated the need for such a safeguard. No definition of the special rights and privileges of the residents of the State can afford to remain static. The need may arise at one stage or the other to liberalise such a definition. The importance of the fact that State Legislature shall retain powers to be able to effect such modifications becomes obvious in this context.

There is yet another class of State Subjects whose interests had to be safeguarded. The Hon'ble Members of this House are aware that on account of the disturbances of 1947 and also as a consequence of the invasion of this country by Pakistan large number of the residents of this State suffered dislocation. We have, therefore, to visualize the possibility of their return to their homes and hearths as soon as normal conditions are restored. It has been suggested in certain quarters that this protection has been provided only for those residents of the State who are at present stranded in Pakistan I would like to make it clear, as I have stated earlier, that this protection will operate only when the conditions are normal and such conditions naturally presume that the resettlement of the dislocated population, whether Muslim or Non-Muslim, cannot be one-sided or unilateral.

FUNDAMENTAL RIGHTS

It is obvious that while our constitution is being framed, the fundamental rights and duties of a citizen have necessarily got to be defined. It was agreed, however, that the Fundamental Rights, which are contained in the Constitution of India could not be conferred on the residents of the Jammu and Kashmir State in their entirety taking into account the economic, social and political character of our movement as enunciated in the New Kashmir Plan. The need for providing suitable modifications, amendments and exceptions as the case may be in the Fundamental Rights Chapter of the Indian Constitution in order to harmonize those provisions with the pattern of our principles was admitted. Particular care would have to

be taken to preserve the basic character of the decesions taken by this House on the question of land compensation as well as the laws relating to the transfer of land to the tiller and other matters. The main point to be determined is whether the Chapter of our Fundamental Rights should form a part of the Kashmir Constitution or that of the Union Constitution.

SUPREMENT COURT

It was agreed that the Supreme Court should have original jurisdiction in respect of disputes mentioned in Article 131 of the Constitution of India. It was further agreed that the Supreme Court should have jurisdiction in regard to Fundamental Rights which are agreed to by the State.

On behalf of the Government of India, it was recommended that the Advisory Board in the State, designated "His Highness's Board of Judicial Advisors" should be abolished and the jurisdiction exercised by it should be vested in the Suprement Court of India. That is to say that the Supreme Court should be the final Court of appeal in all civil and criminal matters as laid down in the Constitution of India.

We, however, felt that this would need a detailed examination and consequently it was agreed that we should have time to consider it further.

NATIONAL FLAG

We agreed that in view of the clarifications issued by me in my public statements while interpreting the resolution of this House according to which the old State flag was in no sense a rival of the National Flag. But for historical and other reasons connected with the freedom struggle in the State, the need for the continuance of this flag was recognized. The Union flag to which we continue our allegiance as a part of the Union will occupy the supremely distinctive place in the State.

PRESIDENT OF INDIA

It was agreed that the powers to grant reprieve and com-

mute death sentences, etc. snould also belong to the President of the Union.

HEADSHIP OF THE STATE

1 am glad to inform this House that the Government of India have appreciated the principle proposed by the Basic Principle Committee as adopted by this Assembly in regard to the abolition of the hereditary rulership of the State. In order to accommodate this principle, the following arrangement was mutually agreed upon :

i. The Head of the State shall be the person recognized by the President of the Union of the recommendation of the Legislature of the State.
ii. He shall hold office during the pleasure of the President.
iii. He may, by writing under his hand addressed to the President resign his office.
iv. Subject to the foregoing provisions, the Head of the State shall hold office for a terms of five years from the date he enters upon his office.
v. Provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office.

FINANCIAL INTEGRATION

In regard to this subject, we agreed that it would be necessary to evolve some sort of financial arrangement between the State and the Indian Union. But as this involved far reaching consequences, it was felt that a detailed and objective-examination of this subject would be necessary.

EMERGENCY POWERS

On behalf of the Government of India, it was stated that the application of Article 352 of the Constitution was necessary as it related to vital matters affecting the security of the State. They did not press for the application of Articles 356 or 360.

On behalf of the Kashmir Delegation, it was stated that the application of Article 352 to the State was not necessary. In the event of war or external aggression, item I in the Seventh Schedule relating to the defence of India applied and the Government of India would have full authority to take any steps in connection with defence, etc. In particular, we were averse to internal disturbance being referred to in this connection, as even some petty internal disorder might be considered sufficient for the application of Article 352.

In reply it was pointed out that Article 352 could only be applied in a state of grave emergency and not because of some small disorder or disturbance.

In order to meet our view point, it was suggested on behalf of the Government of India that Article 352 might be accepted as it is with the addition at the end of the first paragraph (1) of the following words: "but in regard to internal disturbance at the request or with the concurrence of the Government of the State."

We generally accepted this position, but wanted some time to consider the implications and consequences as laid down in Articles 353, 358 and 359 which on the whole we accepted. In regard to Article 354, we wanted to examine it further before expressing our opinion.

CONDUCT OF ELECTIONS TO HOUSES OF PARLIAMENT

Article 324 of the Indian Constitution already applies to State in so far as it relates to elections to Parliament and to the Offices of the President and the vice-President of India.

I have put before this House the broad indications of the agreements arrived at between us and the Government of India. As the Hon'ble Members will, no doubt, observe, the attitude of the Government of India has been most helpful. A satisfactory position has emerged and we are now able to assess the basic issues of our constitutional relationship with India in clearer terms. There has been a good deal of accommodation of our respective points of view. Both the representatives of the Government of India and the Kashmir Delegation, have been impelled by the desire to strengthen further the existing relationship to remove all obscurity and vagueness.

We are convinced, as ever before, that we have the full support both of the Government and the people of India in the fulfilment of our democratic ideals and the realization of our objectives.

131. Joint Memorandum submitted by Cabinet Members of the Sheikh Abdullah Ministry to the Sadar-i-Riyasat, 8th August, 1953.

You will kindly recall that in the course of the meeting of the Cabinet, held on August 7, 1953, and on many other occasions previously, we brought to your notice that certain pronounced tendencies indicating a very sharp divergence of opinion had become manifest in our approach to the broad policies which from the basis of the Government and the administration. Contrary to the normal practice of a uniform policy in the conduct of the administration, it has become increasingly clear that Mr. Beg and you, in utter disregard of the opinion of your colleagues and without their consultation, make public pronouncements which flout to principle of joint responsibility. Since the formation of the present Government, in spite of the constant endeavour of your colleagues to secure maximum agreement and unity in the formation and execution of essential policies in accordance with the mandate given by the people, you have frequently adopted certain arbitary measures complete denial of the right of expression of opinion of even your own colleagues in the handling both of external and internal affairs of the State.

Most of these measures and policies have been self-contradictory and inconsistent, leading to serious complications. After the establishment of the Legislative Assembly, we have expected that our joint responsibility and collective functioning as a Cabinet would be governed by well-established parliamentary practices. But we regret to observe that you have not only disregarded the wishes of your colleagues in the Cabinet, but have acted in the Legislative Assembly also in a manner which denied the right of freely expressing their opinions to the representatives of the people in regard to the basic policies

pursued by the Government. In the past, even though occasions have arisen when we seriously opposed certain measures which affected the efficient and smooth functioning of the administration we refrained from bringing matter to a head by making concession to your views in the interests of securing harmony and concord in the working of the Government. Unfortunately, however, this spirit of accomodation has been misconstrued by you and you have conseqently adopted an attitude which is far from democratic and indicates a tendency towards making arbitrary use of power and position. Your attitude with regard to the political and economic policies of the Government has given rise to a great deal of confusion in the public mind and serious dislocation in economic life of large sections of the people. For quite some time, now, a factional tendency has been evident in the Cabinet, which has been responsible for a progressive deterioration in the administration. Consequently, various ameliorative measures proposed by the members of the Cabinet in good faith have not been implemented honestly. Above all, there has been a singular failure to exercise vigilence and proper supervision in the day to day functioning of the administration which has produced corruption, nepotism, inefficiency and wanton wastage of public resources in most sphere of Government activity. All these facts of omission and commission have inevitably created large-scale discontent in various part of the State.

All along the Government has lacked a sense of uniformity and direction in its plans and programme. Time and again, we have brought to your notice the imperative need of arresting this process of deterioration in the administration. We attempted to respresent the feelings of various sections of the people and urgent necessity of undertaking immediate measures for the amelioration of these conditions. But we regret to say that you not only disregarded all our opinions in this respect, but have been ignored the recommendations of the Wazir Committee, which had been set up by the Government to inquire into a number of grievances of the people.

Consequently, the political uncertainty has been accentuated with the result that our economy has been thrown into stagnation, which has impoverished large masses of people, when the tourist traffic showed healthy improvement

last year and this year, you destroyed public confidence though your irresponsible utterances.

The events of the last few months have, in particular, thrown the state in the midst of a severe crisis. The repercussions of this crisis are bound to be serious and far-reaching. We regret to state that you, as the head of the Government, have not only failed to take note of the situation but have, by your words and deeds, accentuated the tension. you have consistently refused to acknowledge responsibilities that devolve on you as the Prime Minister of the State by not following the declared policies that form the basis of the Government. You have tended to act in a manner that has generated uncertainty, suspense and doubt in the minds of the people of the State in general and of those in Jammu and Ladakh in particular. All these factors have combined to strengthen the disruptionist forces seeking the disintegration of the State,

As is well known, the unprovoked aggression from Pakistan had put our very national existence at stake. In that cri ical hour of crisis, all of us jointly approached India for help and requested her to accept the accession of the State and assist us in repelling the aggression and restoring peaceful conditions in the State. The united will of the people stood solidly behind this act of Kashmir's accession to India. While accepting our request, the Government of India assured us of the right of self-determination for our people. After the convening of the Constituent Assembly, certain inescapable elaborations of the State's relationship with India were defined in the Delhi Agreement, of which you were the Chief Architect on our behalf. Your stand was unanimously endorsed by the Government, the National Conference, the Indian Parliament and the Constituent Assembly of the State. But you have not only deliberately delayed implementation of the agreements on these matters which form the sheet-anchor of our policy, but have purposefully and openly denounced these in public. You have thus arbitrarily sought to precipitate a rupture in the relationship of the State with India. Though it is true that the people of the State have the ultimate right to decide their future, the conditions of chaos and confusion which are being engineered today by you are bound to be fatal for the exer-

cise of the right of self-determination by our people. Under these circumstances what seems inevitable is that interested foreign powers may well take advantage of and exploit the situation for their own selfish purpose. Mr. M.A. Beg has persistently been following policies of narrow sectarianism, and communalism, which have seriously undermined the the oneness of the State. Unfortunately, you have been lending your support to his policies in the Cabinet and his activities in public. This has generated bitter feelings of suspicion and doubt in the minds of the people of various contituent units of the State. You have connived at all these unfortunate happenings and thus strengthened and encouraged the forces of disruption. The result is that unity and the secular character, the two fundamental aspects of our State, stand threatened today.

We have been constantly urging upon you to put an end to these unhealthy tendencies and to under take unitedly-measures for restoring the moral of the people. In spite of our best intentions, we have failed in our efforts.

It is, therefore, with great pain that we have to inform you of our conclusion that the Cabinet, constituted as it is at present and lacking as it does the unity of purpose and action, has lost the confidence of the people in its ability to give them a clean, efficient and healthy administration.

132. Sadar-i-Riyasat's letter to Sheikh Abdullah.

Karan Mahal,
Srinagar,
August 8, 1953.

My dear Sheikh Abdullah,

You will recall that in the course of our meeting today, I conveyed to you my deep concern at the seriour differences which exist in your Cabinet. I impressed upon you the immediate necessity for restoring harmony and unity or purpose among the members of the Cabinet in the execution of its policies. You were, however, unable to assure me that these

acute differences could be remedied.

This conflict within the Cabinet has for a considerable time been causing great confusion and apprehension in the minds of the people of the State. The situation has reached an unprecedented crisis wiih the effect that three or your four Cabinet colleages have, in a memorandum to you, a copy of which they have sent to me, expressed their complete dissatisfaction with your action and policies, which have lost the present Cabinet and confidence of the people. This document clearly indicates that the divergence with in your Cabinet has reached proportions in which the unity prosperity and stability of the State are gravely jeopardised.

When we met today, I further suggested to you that an emergency meeting of the cabinet should be held at my residence this evening so that we could jointly explore the possibilities of securing a stable, unified and efficient Government for the country. But to my regret you evaded the issue.

Under these conditions, I, as Head of the State, have been forced to the conclusion that the present Cabinet cannot continue in Office any longer and hence, I regret to inform you that I have dissolved the Council of Ministers headed by you A copy of my order in this connection is attached herewith.

I need hardly add how deeply distressed I was at having to take this action, but the vital interests of the people of the State, which it is my duty to safeguard, leave me no alternative. I trust that this will in no way affect the mutual regard and cordial feelings we have for each other.

Yours sincerely,
(Sd/-) Karan Singh
Sadar-i-riyasat

133. Order Issued by the Sadar-i-Riyasat on August 8, 1953.

Where as for some months I have been noticing with growing concern that there have existed acute differences of opinion between members of the Government on basic issues-political, economic and administrative-affecting the vital interests of the State ;

And whereas members of the Government have been publicly expressing sharply conflicting points of view regarding these matters ;

And whereas on these fundamental issues the view of a majority of the members the Cabinet are sharply opposed to the view held by the Prime Minister and one of his colleagues;

And whereas efforts to work in harmony and pull together as a team having failed, and the majority in the Cabinet has expressed that, lacking as it does in unity of purpose and action, the present Cabinet has lost the confidence of the people ;

And whereas the economic distress of the people has considerably increased which needs prompt and serious attention;

And whereas a state has reached in which the very process of honest and efficient administration has become impracticable ;

And whereas finally, the functioning of the present Cabinet on the basis of joint responsibility has become impossible and the resultant conflicts have gravely jeopardised the unity, prosperity and stability of the State ;

I, Karan Singh, Sadar-i-Riyasat, functioning in the interests of the people of the State, who have reposed the responsibility and authority of the Headship of the State in me, do hereby dismiss Sheikh Mohammad Abdullah from the Prime Ministership of the State of Jammu and Kashmir, and consequently the Council of Ministers headed by him is dissolved forthwith.

134 Sadar-i-Riyasat's letter to Bakshi Ghulam Mohammad.

Karan Mahal,
Srinagar,
August 9, 1953.

My Dear Bakshi Sahib,

I have just dissolved the cabinet which functioned till today and have relieved it of the powers and functions of civil administration of the State. I, however, feel that a new Cabinet

should be constituted immediately so as to avoid a political and administrative vacuum.

In the task of forming a new Ministry, I have decided to seek your aid and advice. Will you, therefore, make it convenient to meet me immediately so that we might discuss the formation and composition of the new Cabinet.

I need hardly and that the continuance in office of the new Cabinet will depend upon its securing a vote of confidence from the Legislative Assembly during its coming seesion.

Your sincerely,
(Sd/-)Karan Singh.

135. Bakshi Ghulam Mohammad's reply to Sadar-i-Riyasat's letter.

Srinagar
August, 9, 1953

My dear Sadar-i-Riyasat,

I am highly grateful to you for the trust you have reposed in my by calling me to offer you my aid and advice in the task of constituting a new Cabinet.

In accepting your kind invitation, I am solely guided by a sense of duty to my country, and its people and I shall try to the best of my ability to fulfil the responsibilities which you propose to entrust to me.

I shall be avilable for consulation at your convenience.

Your sincerely,
G. M. Bakshi.

136. Report of the Basic Principles Committee, 1954.

The basic principles of the State Constitution will contain provisions relating to the form of the State, the Excutive, the Legislature, the Judiciary, the Public Service Commission, the official Language and other ancillary matters. The recommen-

dations of the Committee in regard to these matters are contained below:

The State of Jammu and Kashmir will comprise such territories which formed part of the State on 15th August, 1947. While retaining its autonomous character the State will continue to remain acceded with the Union of Incia.

The sovereignty of the State resides in the people thereof and shall except in regard to matters specifically entrusted to the Union, be exercised on their behalf by the various organs of the State.

The governing features of the State Constitution would be based on democracy, equality and social and economic justice. The guiding principle of the State policy would be to ensure the rebuilding of the State by harnessing all its resources for the purpose of securing a better and prosperous life for its people. In order to achieve that end the entire economic activity of the State will be conducted in accordance with plans envisaged in New Kashmir.

In order to satisfy the urge of the people of the State for an intimate association with administration at all levels the Constitution shall embody suitable provisions to that effect. Suitable provision shall also be made enabling the people to develop their various cultures, languages and scripts and to promote closer association and better understanding amongst themselves.

Based on the decision of the Constituent Assembly for the termination of the Hereditary Rulership in the State, the Head of the State will be a person designated as the Sadar-i-Riyasat whose election and other terms of office will be regulated in accordance with the resolution of the constituent Assembly dated 21st August, 1952.

The superintendence, direction and control of the Govern- will vest in a council of Ministers headed by the Prime Minister who will be appointed by the Sadar-i-Riyasat. The Prime Minister will be the person who enjoys the confidence of the State Legislative Assembly. The Council of Ministers will be collectively responsible to the State Legislative Assembly.

The State Legislative Assembly will be composed of members chosen by direct election who will represent constituencies determined by law. The determination of constituencies will be

on population basis and on the scale of one member for every 40,000 of the population. Election to the State Legislative Assembly shall be on the basis of adult suffrage, that is to say, every male or female who has attained the age of 18 years and is not otherwise disqualified under the constitution or any Law made by the State Legislative Assembly on grounds of non-residence, unsoundness of mind,crime or corrupt or illegal practice shall have the right to vote. The State Legislative Assembly will have powers to make laws for the State, in respect of all matters falling within the sphere of its residuary sovereignty. Its life will be five years. Provision for the rights, powers and privileges of the members and the Committees of the Assembly should be made on the lines of the corresponding provisions of the Constitution of India. The superintendence, direction and control of all elections to to the State Legislative Assembly including the appointment of Election Tribunals will vest in a Commission to be appointed by the Sadar-i-Riyasat. Provision will also have to be made for a fixed period to promote with special care the interests of the weaker sections of the people by ensuring their representation in the Assembly.

The Judiciary of the State will be independent of executive. The High Court of Judicature shall consist of the Chief Justice and two or more other judges as the Sadar-i-Riyasat may from time to time appoint. In order to ensure the independent and impartial charaeter of the High Court, a judge of the High Court will not be removed from his office except by an order of Sadar-i-Riyasat passed after an address by the National Assembly supported by a majority of the total membership of the National Assembly and by a majority of the total membership of the National Assembly and by a majority not less than two thirds of the members of the House present and voting, has been presented to the Sadar-i-Riyasat in the same session for such removal, on the ground of proved misbehaviour or incapacity. Provisions will also have to be made for the terms and conditions of service of High Court Judges commensurate with the independence and dignity of the High Court.

The High Court will be a Court of Record and shall have all the powers of such Court including the power to punish for contempt of itself. The High Court shall have the same

powers and jurisdiction as are exercised by it at present under the Constitution or any other law in force in the State. Provisions in this respect will be modelled on the those contained in the existing Constitution of the State and the relevant parts of the Constitution of India. Adequate provisions shall also be made in the Constitution for ensuring independence and integrity of the subordinate Courts.

An appeal shall lie to the Supreme Court of India from a judgement, decree or final order of the High Court in Civil proceedings if the High Court certifies that the amouut or value of the subject matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than 20,000 rupees or that the case is a fit one for appeal to the Supreme Court. Similarly an appeal shall lie to the Supreme Court of India in criminal matters if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or has withdrawn for trail before itself any case from any subordinate court and has in such trial convicted the accused person and sentenced him to death and lastly if the High Court certifies that the case is a fit one for appeal to the Supreme Court. An appeal shall also lie to the Supreme Court of India in certain civil, criminal or other proceeding if the High Court certifies that the case involves a substantial question of law as to the interpretation of the provisions of the Constitution of India which apply to the State under Article 370 of the Constitution. The original jurisdiction of the Supreme Court will extend to disputes between the Centre and State or States interest as specified in Article 131 of the Constitution of India.

Provision with regard to the establishment of a public Service Commission should be made in the Constitution. The appointment of its Chairman and members will be made by the Sadar-i-Riyasat. It will function independent of executive. Its Chairman and other members will be removable from office in the manner provided for the removal of a High Court judge.

The official Language of the State will be Urdu, but English language may be used for all official purposes for which it is being used at present. The Constitution should also recognise the regional languages of the various cultural units of the

State.

Further provisions relating to the transitional and ancillary matters should be incorporated in the Constitution. Necessary provisions should also be incorporated in the Constitution ensuring that an amendment of the Constitution shall be made only by two thirds majority of the total membership of the Assembly.

The State of Jammu and Kashmir having acceded to the Union of India, it becomes necessary to define the relationship of the State with Centre. This relationship was originally based on the Instrument of Accession whereby the State of Jammu and Kashmir acceded to the Union of India in matters of Defence, Foreign Affairs and Communication. When the dominion of India became a republic, the relationship of the State with the Union was embodied in Article 370 of the Union Constitution. The State's accession to the Union entails certain responsibilities on the Centre for protecting the interests of the State and also for its social and economic development. In order to enable the Centre to discharge its responsibilities which devolve upon it under the Constitution, those provisions of the Constitution of India which may be necessary for this purpose should be made applicable to the State in an appropriate manner. While preserving the internal autonomy of the State all the obligations which flow from the fact of accession and also its elaborations as contained in the Delhi Agreement should find an appropriate place in the Constitution. The Committee is of the opinion that it is high time that finality in this respect should be reached and the relationship of the State with the Union should be expressed in clear and precise terms. The Committee accordingly recommends :

(i) that a directive be issued to the Drafting Committee to bring up appropriate proposals defining the sphere of Union Jurisdiction in the State suggesting additions, modifications and amendments wherever necessary in the Constitution (Application to Jammu and Kashmir) Order, 1950 to suit requirements of the State;

(ii) that the Drafting Committee should forthwith take up the drafting of the Constitution for the State in the light of the recommenditions contained in this report

and such other reports as have been or are adopted by this Assembly from time to time.

137. Report relating to Citizenship and Fundamental Rights, 1954.

The Advisory Committee on Fundamental Rights and Citizenship was set up by the resolution of the Constituent Assembly dated 7th November, 1951, in order to make recommendations as regards qualifications required for Citizenship and the determination of Fundamental Rights of the residents of the State. The Committee was reconstituted by the Constituent Assembly by its resolution dated the 20th October, 1953.

The State having acceded to the Union of India, every State Subject and every person having his domicile in the State is a Citizen of India under the provisions of the Constitution of India. It is, however, recognized by the Government of India that this position would not affect the existing State subject definition. While the Committee adheres to principle underlying this definition, it feels that the definition should be liberalized in keeping with the changed times. The Committee therefore recommends that all the three classes of State Subjects provided in the definition be removed and a uniform class of permanent residents be established. Accordingly every person residing in the State who is a State Subject of Class I or Class II or after having acquired immovable property in the State has been ordinarily residing there for a period of not less than ten years prior to the date of enforcement of this provision shall be a permanent resident of the State.

The powers of the State Legislature to define 'Permanent Residents of the State' in future in any manner it deems fit and to regulate the special rights and privileges of the Permanent Residents of the State should be preserved. A majority of not less than two-thirds of the total membership of the House shall be necessary for the exercise of this power. The Committee is of the opinion that while adequate provisions

to that effect should be incorporated at an appropriate place in the Constitution of India, the provisions of Part II of the Constitution of India relating to Citizenship should also be made applicable to the State and care should be taken to protect the special position accorded to the State Subjacts to be now known as "Permanent Residents of the State" and their special rights and privileges. Necessary modification shall also have to be provided in that Part to enable those Subjects of the State who had migrated to Pakistan in 1947 in connection with the disturbance or in fear of the same, to return to the State under a permit for resettlement or permanent return issued under the authority of law that would be made by the State Legislature in due course.

The Committee is of the view thas the State Legislature should also be competent to make provisions with respect to acquisition and termination of the Status of Permanent Residents of the State and until the State Legislature enacts provision that behalf, the existing Ijazatnama Rules should continue to remain in force and the existing procedure for obtaining a State Subject Certificate should apply for the purpose of securing a certificate as to the status of a Permanent Resident.

FUNDAMENTAL RIGHTS

An examination of the Fundamental Rights embodied in the Constitutions of some of the more important countries of the world would reveal that while there are certain rights which require position by the State and which can be granted only so far as such action is practicable, there are others which require that the State shall abstain from prejudicial action. It is obvious that the rights of the first type are not normally either capable of or suitable for enforcement by legal action, while those of the second type may be so enforced. Both classes of rights are mentioned together under the head "Fundamental Rights" in certain Constitutions but in certain others distinction between two forms of rights is clearly recognized. A similar distinction is recognized in Dr. Lauterpacht 's" International Bill of Rights of Man 1945." The Committee having carefully considered that matter is of the view that it would be useful to separate the two classes of

rights' firstly those rights which shall be enforceable in a Court of Law and secondly those which shall be guaranteed by enjoining upon the State to take specified and planned action in the field of special and economic reconstruction of the State. This set of rights shall retain fundamental position in the governance of the State.

The question of evolving Fundamental Rights has been considered and discussed at length by the Committee. It has been recognized by the Government of India that the Fundamental Rights as contained in part III of the Constitution of India, should not come in the way of Land Reforms already intropuced by the State or the reforms that might be undertaken by the State in future. This was particularly necessary in view of the fact that the State has not provided for any compensation for the land expropriated under its Land Reforms. The Government of India has also recognised that the special rights and privileges enjoyed by the Permanent Residents of the State relating to acquisition and holding of immovable property and in respect of employment under the State shall be fully safeguarded.

The Committee having taken note of the Fundamental Rights provided in various constitutions including the Constitution of India recommends the following rights for adoption by the State.

1. Equality of rights of all citizens, irrespective of religion, race, caste, sex, place of birth of any of them, in all spheres-economic, political cultural and socialshould be guaranteed; that is to say, every citizen should have the right to Equality before law and there should be no discrimination against any citizen on grounds only of religion, race, caste, or sex,place of birth, and no citizen should be subject to any disability, liability, restriction or condition with regard to :

   (a) access of shops, public restaurants, hotels and places of public entertainment; or
   (b) the use of wells, tanks, bathing, Ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the

general public.

2. The Committee strongly feels that women must attain their just and rightful place in society and their cooperation in the mighty and resposible task of nationbuilding must be secured. Similarly all children born in the State should be ensured equality of opportunity irrespective of accidents of birth and percentage. In order achieve to that end the State should be able to make any special provisions it deems fit for women and children.
3. Untouchability is abolished and its practice in any form shall be forbidden.
4. In conformity with the interests of the people, all citizens shall have right to Freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions, to move freely througout the territory of the State, to reside and settle in any part of the territory of the State, to acquire, hold and dispose of property subject to the laws of the State and to practice any profession or to carry on any occupation, trade or business.

   The State should, however, have powers to impose such restrictions as are considered reasonably by the State Legislature on the excrcise of these rights in the interests of general public, security of the State, public order, communal harmony, decency or moralty in relation to contempt of court, defamation, or incitement to an offence, or for the protection of the special rights and privileges of the Permanent Residents of the State.
5. Protection in respect of conviction for offences and of life and personal liberty shall also be afforded. The provisions and procedure pertaining to preventive detension should follow on the lines of the corresponding provisions in the Fundamental Rights of India.
6. All citizens shall have Right Against exploitation i.e. traffic in human beings and forced labour, employment of children in factories etc. shall be prohibited.
7. Freedon of Religion shall be guaranteed i.e. all citizens

shall have the freedom of conscience and shall be free to profess, practise, and propagate any religion and to manage their respective religious affairs.

8. Cultural and educational rights should also be guaranteed by the Constitution. The interests of the minorities should be protected and any section of citizens having a distinct language, script or culture should have the right to conserve the same.
9. Right to property shall be guaranteed, and no person shall be deprived of this property save by authority of Law. This should not, however, in any way effect the existing laws relating to land reforms nor should it prevent the State Legislature to make any further land reforms. Accordingly no law, made by the State Legislature, providing for the acquisition by the State of any land or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the aforesaid rights. The existing definition of land shall be preserved.
10. Similarly all these fundamental Rights should be subject to the over-riding condition that :

    (i) no law of the State relating to State Subject to be hereafter called 'Permanent Residents' and regulating their rights and privileges; and
    (ii) no law hereafter to be made by the State Legislature defining the Permanent Residents, and conferring on them special rights and privileges in relation to acquisition and holding of property in the State or in matter of employment under the State and imposing restrictions on citizens other than Permanent Residents for settling within the State should become void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Part (III) of Constitution of India.

11. The Committee feels that a declaration of Fundamental Rights would be more effective if suitable

judicial remedies for the enforcement of these rights are provided and therefore it is proposed that the citizens shall have the right to Constitutional Remedies. In order to ensure the fullest protection in regard to enjoyment of these rights the citizens shall be allowed to seek redress from the highest court i.e. the Supreme Court of India. In order to avoid any possibility of conflict of the Fundamental Rights proposed above and those contained in Part (iii) of the Constitution of India, the Committee feels that the former rights in so far as they vary in certain respects the provisions of the Fundamental Rights of the Union should be reflected in part (iii) of the Constitution of India. The Government of India has alread agreed to provide appropriate modifications or exceptions in Part (III) of the Constitution of India to suit the requirements of the State.

As indicated above there should be separate set of Principles which would be fundamental in the governance of the State and shall be intended for the guidance of the State. The Committee recognises that in a democratic State every person must be provided with equal opportunities and adequate minimum of a civilised standard of life. To realise that ideal, however, the State must take resort to economic planning with a view to achieve all sides advance on a country wide scale. Similar other rights, for instance, the right to rest, the right to material security etc. can be ensured only when a stage of industrial development and economic prosperity, as envisaged in 'New Kashmir', is achieved. The Committee, therefore, proposes that the principles of policies set forth below should serve as guidance for the State leading the people towards that end.

I. The State shall within the limits of its economic capacity and development make effective provision for securing the right to work, that is, the right to receive guaranteed work with payment for their labour in accordance with its quantity and quali-

ty subject to a basic minimum and maximum wage established by law.

II. The State shall endeavour to secure, by suitable legislation, economic organisation and in other ways, to all workers, industrial or otherwise, better conditions of work ensuring a decent standard of life, full enjoyment of leisure and cultural opportunities.

III. The State shall make provision for securing just and humane conditions of work and for maternity relief for workers.

IV. All permanent residents of the State shall have the right to material security in old age as well as in the event of sickness and loss of capacity to work.

This right shall be ensured by the wide development of social insurance of workers and employees at the expense of the State, free medical aid for workers and the provision of a wide network of health resorts for the use of working men and women.

The State shall, in particular, direct its policy towards securing:

(i) that the Permanent Residents of the State, men and women equally, have the right to an adequate means of livelihood;

(ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(iii) that the operation of free competion shall not be allowed to result in the concentration of the ownership and control of essential commodities in few individuals to the common detriment;

(iv) that the strength and health of workers, men and women, and the tender age of children shall not be absus d andthat citizens shall not be forced by economic necessity to entervocations unsuited to their age and strength; and

(v) that childhood and youth are protected against moral and material abandonment;

(vi) every Permanent Resident shall be entitled to free education, and it shall be the duty of the State to provide free education which shall be compulsory for all children upto the primary standard.

(vii) the State shall promote with special care the educational and economic interests of the socially and educationally backward sections of the people and shall protect them from social injustice and all forms of exploitations.

(viii) the State shall foster and encourage the growth and development of State and regional languages, especially those which are more backward by every possible means including the following :

(i) the establishment of a State Languages Academy where scholars and gramarians shall work to develop these languages by:

(a) perfecting and providing their scripts;
(b) enriching them through foreign translations;
(c) studying their history;
(d) compiling dictionaries and textbooks ;

(ii) founding of State scholarships for the study of these languages;

(iii) fostering of local press and publications in in local languages; and

(ix) It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest declared by the Law of the State to be national importance, from spoilation, destruction, removal, disposal or export as the case may be and to preserve and maintain according to the law of the State all such monuments or places

or objects.

In the light of the foregoing the committee recommends that :

(i) the Drafting Committee, set up by this House be directed to propose appropriate modifications or exceptions in Part II and Part III of the Constitution of India in their application to the State of Jammu and Kashmir in the light of the recommendations contained in this report; and

(ii) that the Drafting Committee should, while preparing the Draft Constitution of the State incorporate therein the rights and principles indicated above.

138. Report of the Drafting Committee.

In pursuance of the directives contained in the Reports of the Basic Principles Committee and the Advisory Committee on Fundamental Rights and Citizenship, as adopted by the House on 6th February, 1954, the Drafting Committee has considered the question as to how best to give effect to the recommendations embodied in these Reports. The task which the Committee has to discharge requires action in the following directions :

1. Preparation of the Draft Constitution of the State.
2. Defining the sphere of Union Jurisdiction in the State and for that purpose suggesting the various provisions of the Constitution of India along with modifications and exceptions subject to which these provisions should apply to the State. These would include appropriate modifications and exceptions in Part II (Citizenship) and Part III (Fundamental Rights) in their application to the State of Jammu and Kashmir in the light of the recommendations contained in the report of the Advisory Committee on Citizenship and Fundamental

Rights.

3. Consequential amendments in the Jammu and Kashmir Constitution Act, 1996.

As for the preparation of the Draft Constitution for the State the Committee feels that in view of the importance and magnitude of the work involved, adequate time will be needed for the completion of this task and accordingly recommends that the same may be allowed.

The Annexure to this Report while reflecting the desire of the House for the ratification of the accession of the State with the Union of India, indicates in detail the provisions of the Constitution of India which generally correspond to Defence, Foreign Affairs and Communications and such other matters as are considered essential concomitants of the fact of accession. In accordance with the directions contained in the two reports, referred to above, the Committee has eudeavoured to clearly demarcate the sphere of Union Jurisdiction keeping intact all along the residual powers of the State. While doing so the 'Committee has further provided adequate safeguards for preserving the basic policies of the State in respect of the land-reforms and the interests of the permanent residents of the State.

A bill for the purpooe of making consequantial amendments in the Jammu and Kashmir Constitution Act, 1996, in the light of the Reports referred to in the opening paragraph of this Reports will be drafted and presented to the House in due course.

Dated: Jammu the 11th February, 1954.

(Sd.) G.L. Dogra
,, Mir Qasim
,, D. P. Dhar
,, Ghulam Rasul Renzu
,, Harbans Singh Azad
Members Drafting Committee.

139. The Jammu and Kashmir Constitution (Amendment) Act, 2011.

(*Extract*)

1. Short Title and Commencement:...(1) This Act may be called the Jammu and Kashmir Constitution (Amendment) Act, 2011.

(2) Except as hereinafter provided, the provisions of this Act shall be deemed to have come into force from 14th May, 1954.

(3) Insertion of new part after section 5 :...After section 5 of the Jammu and Kashmir Constitution Act, 1996 (hereinafter referred to as, ' the said Act') the following new part shall be inserted namely:

PART I (A)
PERMANENT RESIDENTS

5-A. Every person who is or is deemed to be a citizen of India under the provisions of Part II of the Constitution of India as applied to the State of Jammu and Kashmir under the Constitution (Application to Jammu and Knshmir) Order 1954, shall be a permanent resident of the State of Jammu and Kashmir if at the date of commencement of the Jammu and Kashmir Constitution (Amendment) Act 2011, namely the 14th May 1954;

(a) he was a State Subject of Class II as defined in the State Subject Notification No. I-L/84 dated 20th April, 1927 read with Notification No. 13/L dated 27th June, 1932, or

(b) after having acquired immovable property in the Jammu and Kashmir State in pursuance of an Ijazat-nama granted under the jazatnama Rules for the time being in force, he has been ordinarily resident in the territory of the State for not less than ten years prior to the date of such commencement.

Explanation

All persons who before the commencement of the

the Constitution (Application to Jammu and Kashmir) Order, 1954 were State Subjects of Class I or Class II as defined in the State Subject Notification No, I-L/84 dated 20th April, 1927, read with Notification No. 13/L dated 27th June, 1932, and who having migrated after the first day of March, 1947, to the territory now included in Pakistan return to the State under a permit for settlement in the State or permanent return issued by or under the authority of any law made by the State Legislature shall continue to be deemed permanent residents of the State.

Status of permanent residentship of certain juristic persons:... 5-B. Notwithstanding anything contained in the foregoing provisions, of this Act every Company, which, immediately before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, was recognised to be a State Subject within the meaning of State Subject Notification No. I-L/84 dated 20th April, 1927 shall be deemed to be a permanent resident at such commencement.

Explanation

In this section "Company" shall have meaning assigned to it in the Jammu and Kashmir Companies Act, 1927.

Continuance of the Status of permanent residentship:...5-C. Every person who is or who is deemed to be a permanent resident of the State of Jammu and Kashmir shall subject to the provisions of any law that may be made by the State Legislature, continue to be such permanent resident.

State Legislature to define and regulate the rights of permanent residents by 2/3rds majority:...5-D. The power of the State Legislature to define the term permanent resident of the State and to regulate their special rights and privileges shall be exercisable only by a majority of not less than two thirds of the total membership of the Legislative Assembly.

State Legislature to make Laws respecting the acquisition of the status of permanent resident :... 5-E. Nothing contained in the foregoing provisions shall derogate from the power of the State Legislature to make such laws as it thinks fit with respect to the acquisition of the status of the permanent residents and until the State Legislature enacts provisions in that behalf the existing Ijazatnama Rules shall continue to remain in force and the existing procedure for

obtaining a State Subject Certificate shall be followed for the purpose of securing the certificate of being a permanent resident of the State.

Reference to the term State Subject :... 5- F. Unless the context otherwise requires all references in the existing laws of the State to the expression 'State Subject' shall be construed as references to the "permanent residents of the State".

3. Amendment of section 23 Act XIV of 1996 :... In section 23 of the said Act for the words 'State Subjects' the words "permanent residents of the State" shall be substituted.

4. Amendment of section 29, Act XIV of 1996 :... Section 29 of the said Act shall be numbered as sub-section (I) of the said section and after sub-section (I) as so renumbered the following sub-section shall be added, namely :

> "Powers, Privileges and Immunities of the Legislative Assembly and its Members and Committee—(2) in other respects, the powers, privileges and immunities of the Legislative Assembly and the Members and the Committees thereof shall be such as may from time to time be defined by law and until so defined shall be those of the Parliament of India and its Members and Committees."

5. Amendment of section 31, Act XIV of 1996 :... In sub-section (3) of section 31 of the said Act for the words "then become an Act and have the force of law" the words "become an Act and have the force of law as soon as it is published in either of the aforesaid languages" shall be substituted.

6. Amendment of section 37, Act XIV of 1996...In section 37 of the said Act for the words "a member of Board of Judicial Advisors" the words "any Judge of the Supreme Court of India" shall be substiuted.

7. Amendment of section 43, Act XIV of 1996 ...In section 43 of the said Act :

(i) in clause (c) the words "and the members of Board of Judicial Advisors" shall be deleted and

(ii) after clause (d) the following new clause shall be

inserted, namely :

"(dd) The salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly."

8. Amendment of section 54, Act XIV of 1896 ...In section 54 of the said Act for the words "Coat of Arms" the words "State Emblem" shall be substituted.

9. Amendment of section 56, Act, XIV of 1996 .. In sub-section (2) of section 56 of the said Act, for the words 'Rupees ten thousand" the words "Rupees twenty thousand" shall be substituted.

(ii) this section shall come into force from the date of publication of this Act in the Government Gazette.

10. Omission of section 62, Act XIV of 1996 —Section 62 of the said Act shall be omitted.

11. Insertion of new section after section 62, Act XIV of 1996 —After section 62 of the said Act, the following new section shall be inserted, namely :

"62A. If the High court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Act or the Constitution of India as applied to the State by the Constitution (Application to Jammu and Kashmir) Order, 1954. the determination of which is necessary for the case, it shall withdraw the case and may—

(a) either dispose of the case itself, or
(b) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its Judgment on such question and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

12. Insertion of new section 66—A, Act XIV of 1996 ... After section 66 of the said Act the following new section shall be inserted, namely :

> "66—A. If at any time it appears to the Council that a question of law or fact has arisen, or is likely to arise, which if of such a nature and of such public importance that it is expedient to obtain the opinion of the High court upon it, it may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the Council its opinion thereon."

13. Omission of section 71, Act XIV of 1996....Section 71 of the said Act shall be omitted.

14. Omission of section 75, Act XIV of 1996....Section 75 of the said Act shall be omitted.

15. Insertion of new section 76-A, Act XIV of 1996 ... After section 76 of the said Act the following new section shall be inserted, namely :

"Saving as regards Letters Patent 76-A :...The provision of the Letters Patent granted to the High Court on 28th May,1943 shall continue to remain in force except in so far as these are inconsistent with the provisions of this Act or of any other law for the timebeing in force."

16. Amendment of Schedule I-A, Act XIV of 1996 ...In form "C" of Schedule I-A of the said Act the words "for the members of the Board of Judicial Advisors and", occurring in the long title, and the words "President/a member of the Board of Judicial Advisors", in the text of the oath shall be omitted.

140. The Constitution of Jammu and Kashmir, 1956.

(*Extract*)

We, the people of the State of Jammu and Kashmir, having solemnly resolved, in pursuance of accession of this State to

India which took place on the twenty-sixth day of October, 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure to overselves.

JUSTICE, social, economic and political ;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity ; and to promote among us all ;

FRATERNITY, assuring the dignity of the individual and the unity of the Nation ;

IN OUR CONSTITUENT ASSEMBLY This seventeenth day of November, 1956 do Hereby Adopt Enact and Give to ourselves this constitution.

PART I
PRELIMINARY

1. (1) this Constitution may be called the Constitution of Jammu and Kashmir.

   (2) This section and sections 2,3,4,5,6,7,8, and 158 shall come into force at once and the remaining provisions of this constitution shall come into force on the twenty-sixth day of January, 1957, which day is referred to in this Constitution as the commencement of this Constitution.

2. (I) In this Constitution, unless the context other-wise requires.

   (a) "Constitution of India" means the Constitution of India as applicable in relation to this State.

   (b) "existing law" means any law, ordiance, order bye-law, rule notification ; or regulation pased, made or issued before the commencement of this Constitution by the Legislature or other competent authority or person having power to pass, make or issue such law, ordinance, order, bye-law rule, notification or regulation ;

   (c) "Part" means a part of this Constitution ;

(d) "Schedule" means a schedule to this Constitution ; and

(e) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly.

(2) Any reference in this Constitution to Acts or laws of the State Legislature shall be construed as including a reference to an Ordianance made by the Sadar-i-Riyasat.

PART II
THE STATE

(3) The State of Jammu and Kashmir is and shall be an integral part of the Union of India.

(4) The territory of the State shall comprise all the territories which on the fifteenth day of August, 1947, were under the sovereignty or suzerainty of the Rular of the State.

(5) The executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India.

PART III
PERMANENT RESIDENTS

(6) (1) Every person who is, or is deemed to be, a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the State, if on the fourteenth day of May, 1954.

(a) he was a State subject of class I or of class II; or

(b) having lawfully acquired immovable property in the State, he has been ordinarily resident in the State for not less than ten

years prior to that date.

(2) Any person who, before the fourteenth day of May, 1954 was a State subject of Class I or of Class II and who, having migrated after the first day of March, 1947, to the territory now iucluded in Pakistan, returns to the State under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on such return be a permanent resident of the State.

(3) In this section, the expression" State subject of Class I or of Class II" shall have the same meaning as the State Notification No I-L/84 dated the twentieth April, '1927, read 1with State Notification No 13/L dated the twenty-seventh June, 1932.

7. Unless the context orherwise requires, all references in any existing law to hereditary State subject or to State subject of class I or of Class II or of class III shall be construed as references to permament residents of the State.

8. Nothing in foregoing provisions of this part shall derogate from the power of the State legislature to makc any law defining the classes the persons who are, or shall be permanent residents of the State.

9. A Bill marking provision for any of the following matters, namely.

(a) defining or altering the definition of, the classes of persons who are, or shall be, permanent residents of the State;

(b) confrering on permanent residents any special rights or privileges;

(c) regulating or modifying any special rights or privileges enjoyed by permanent residents;

shall be deemed to be passed by either House

of the Legislature only if It is passed by a majority of not less than two-thirds of the total membership of that House.

10. The permanent residents of the State shall have all the rights guaranteed to them under the Constitution of India.

PART IV
DIRECTIVE PRINCIPLES OF STATE POLICY

11. In this part, unless the context otherwise requires, the State includes the Government and the Legislature of the State and all local or other authorities within the territory of the State or under the control of the Government of the State.
12. The provisions contained in this Part shall not be enfoceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the State and it shall be the duty of the State to apply these principles in making laws.
13. The prime object of the State consistent with the ideals and objectives of the freedom movement envisaged in" New Kashmir" shall be the promotion of the welfare of the mass of the people by establishing and preserving a socialist order of society wherein all exploitation of man has been abolished and wherein justice-social, economic and political-shall inform all the institutions of national life.
14. Consistently with the objectives outlined in the foregoing section, the State shall develop in a planed manner the productive forces of the country with a view to enriching the material and cultural life of the people and foster and protect.

    (a) the public sector where the means of production are owned by the State;
    (b) the co-operative sector where the means of

production are co-operatively owned by individuals or groups of individuals; and

(c) the private sector where the means of production are owned by an individual or a corporation employing labour, provided that the operation of this sector is not allowed to result in the concentration of wealth or of the means of production to the common detriment.

15. The State shall indeavour to organise and develop agriculture and animal husbandry by bringing to the aid of the cultivator the benefits of modern and scientific research and techniques so as to ensure a sppeedy improvement in the standard of living as also the prosperity of the rural masses.
16. The State shall take speps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.
17. The State shall, in order to rehabilitate, guide and promote the renowned crafts and cottage industries of the State, initiate and execute well considered programmes for refining and modernising techniques and modes of production, including the empoloyment of cheap power so that unnecessary drudgery and toil of the workers are eliminated and the artistic value of the products enhanced, while the fullest scope is provided for the encouragement and development of individual talent and initiative.
18. The State shall take steps to seperate the judiciary from the executive in the public-services, and shall seek to secure a judicial system which is humane, cheap, certain, objective and impartial, whereby justice shall be done and shall be seen to be done and shall further strive to ensure efficiency, impartialty and incorruptibility of its various organs of justice, administration and public utility.
19. The State shall, within the limits of its economic

capacity and development, make effective provision for securing:

(a) that all permanent residents, man and women equally, have the right to work, that is, the right to receive guaranteed work with payment for labour in accordance with its quantity and quality subject to a basic minimum and maximum wage established by law;
(b) that the health and strength of workers, men and women and the tender age of children are not abused and that permanent residents are not forced by economic necessity to enter avocations unsuited to their sex, age or strength;
(c) that all workers, agricultural or otherwise have reasonable, just and humane conditions of work with full enjoyment of leisure and social and cultural opportunities; and
(d) that all permanent residents have adequate maintenance in old age as well as in the event of sickness, disablement unemployment and other cases of undeserved want by providing social insurance, medical aid, hospitals, sanatoria and health resorts at State expense.

20. The State shall endeavour:

(a) to secure to every permanent resident the right to free education upto the University standard;
(b) to provide, within a period of ten years from the commencement of this constitution, compulsory education for all childern until they complete the age of fourteen years; and
(c) to ensure to all workers and employees adequate facilities for adult education and part-time technical, professional and vocational courses.

21. The State shall strive to secure:

(a) to all children the right to happy childhood with adequate medical care and attention; and
(b) to all children and youth equal opportunities in education and employment, protection against exploitation, and against moral or matterial abandonment.

22. The State shall endeavour to secure to all women:

(a) the right to equal pay for equal work;
(b) the right to maternity benefits as well as adequate medical care in all employments;
(c) the right reasonable maintenance, extending to cases of married womon who have been divorced or abandoned;
(d) the right to full equality in all social, educational, political and legal matters; and
(e) special protection against discoustesy, defamation, hooliganism and other forms of misconduct.

23. The State shall guarantee to the socially and educationally backward sections of the people special care in the promotion of their educational, material and cultural interests and protection against social injustice.
24. The State shall make every effort to safeguard and promote the health of the people by advancing public hygene and by prevention of disease through sanitation, pest and vermin control, propaganda and other measures, and by ensuring widespread, efficient and free medical services throughout the State and, with particular emphasis, in its remote and backward regions.
25. The State shall combat ignorance, superstition, fanaticism, communialism, racialism, cultural

backwardness and shall seek to foster brotherhood and equality among all communities under the aegis of a secular State.

PART V
THE EXECUTIVE
THE SADAR-i-RIYASAT

26. (1) The Head of the State shall be designated as the Sadar-i-Riyasat.

(2) The executive power of the State shall be vested in the Sadar-i-Riyasat and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(3) Nothing in this Section shall:

(a) be deemed to thansfer to the Sadar-I-Riyasat any functions conferred by any existing law on any other authority ; or

(b) prevent the State legislature from confe-ring by law funciions on any authority subordinate to the Sadar-i-Riyasat.

27. The Sadar-i-Riyasat shall be the person who for the time being is recognised by the President as such :

Provided that no person shall be so recognised unless he:

(a) is a permanent resident of the state;

(b) is not less ihan twenty-five years of age; and

(c) has bcen elected as Sadar-i-Riyesat by a majoriiy of the total membership of the Legislative Assembly in the manner set out in the First Schedule.

28. (1) The Sadar-i-Riyasat shall hold office during the pleasure of the President.

(2) The Sadar-i-Riyasat may, be writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provision of this section, the Sadar-i-Riyasat shall hold office for a term of five years from the date on which he enters upon his office :
Provided that he shall notwithstanding the expiration of his term, continue to hold office until his successor enters upon his offlee.

29. A person who holds or has held office as Sadar-i-Riyasat shall, subject to the other provisions of this Constitution, be eligibile for re-election to that office.

30. (1) The Sadar-i-Riyasat shall not be a member of either House of Legislature and if a member of either House be elected and recognised as Sadar-i-Riyasat, he shall be deemed to have vacated his seat in the House on the date on which he enters upon his office as Sadar-i Riyasat.

(2) The Sadar-i-Riyasat shall not hold any other office of profit.

(3) The Sadar-i-Riyasat shall be entitled to such emoluments, allowances and privileges as are specified in the second schedule.

(4) The emoluments and allowances of the Sadar-i-Riyasat shall not be diminished during his term of office.

31. The Sadar-i-Riyasat and every person acting as Sadar-i-Riyasat shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court, or in his absence. the senior-most judge of the High Court available, in an oath or affirmation in the following form that is to sayed "I, A. B., do swear in the name of God that I will faithfully discharge the functions of

the Sadar-I-Riyasat of Jammu and Kashmir and will to the best of my ability prestrve, protect and defend the Constitusion and the law and that I will devote myself to the service and well being of the people of State."

32. The Sadar-i-Riyasat may be removed from his office by the President if an address by the Legislative Assembly supported by a majority of not less than two-thirds of its total membership is presented to the president praying for such removal on the ground of violation of the Constitution.
33. When a vacancy occurs in the office of the Sadar-i-Riyasat by reason of his death, resignation or removal or when the Sadar-i-Riyasat is unable to discharge his functions owing to absence, illness or or any other cause, the functions of the office shall, until the assumption of office by a newly elected Sadar-i-Riyasat or the resumption of duties by the Sadar-i-Riyasat, as the case may be, discharged by such person as the President may on the recommendation of the Council of Ministers of the State, recognise as the acting Sadar-i-Riyasat.
34. The Sadar-i-Riyasat shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relatingto a matter to which the excutive power of the State extends.

THE COUNCIL OF MINISTERS

35. (1) There shall be a council of Ministers with the Prime Minister at the head to aid and advise the Sadar-i-Riyasat in the exercise of his functions.
    (2) All functions of the Sadar-i-Riyasat except those under sections 36, 38 and 92 shall be exercised by him only on the advice of the Council of Ministers.
    (3) The question whether any, and if so what,

advice was tendered by Ministers to the Sadar-i-Riyasat shall not be inquired into in any court.

36. The Prime Minister shall be appointed by the Sadar-i-Riyasat and the other Ministers shall be appointed by the Sadar-i-Riyasat on the advice of The Prime Minister.

37. (I) The Council of Ministers shall be collectively responsible to the Legislative Assembly.
(2) A Minister who for any period of six consecutive months is not a member of either House of Legislature shall upon the expiry of that period cease to be a Minister.

38. The Sadar-i-Riyasat may on the advice of the Prime Minister appoint from amongst the members of either House of Legislature such number of Deputy Ministers as may be necessary.
39. The Ministers and the Deputy Ministers shall hold office during the pleasure of the Sadar-i-Riyasat.
40. Before a Minister or a Deputy Minister enters upon his office, the Sadar-i-Riyasat or, in his absence, any person authorised by him, shall administer to the Minister or the Deputy Minister to oaths of office and of secrecy according to the form set out for the purpose in the Fifth Schedule.
41. The salaries and allowances of Ministers and Deputy Ministers shall be such as the Legislature may from time to time by law determine and, until so determined, shall be such as are payable respectively to the Ministers and the Deputy Ministers under the Jammu and Kashmir Minister's Salaries Act, 1956 (Act VI of 1956) the Jammu and Kashmir Minister's Travelling Allowances Rules for the time being in force, and the Jammu and Kashmir Deputy Ministers Salaries and Allowances Act. S. 2010 (Act VIII of S.2010)

THE ADVOCATE GENERAL

42. (1) The Sadar-i-Riyasat shall appoint a person who is qualificd to be appointed a Judge of the High Court, to be Advocate General for the State.

(2) It shall be the duty of the Advocate General to give advice to the Government upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Government, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties, the Advocate General shall have the right of audience in all courts in the State.

(4) The Advocate General shall hold office during the pleasure of the Sadar-i-Riyasat and receive such remuneration as the Sadar-i-Riyasat may determine.

CONDUCT OF GOVERNMENT BUSINESS

43. The Sadar-i-Riyasat shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among Ministers of the said business.

44. It shall be the duty of the Prime Minister

(a) to cummunicate to the Sadar-i-Riyasat all decisions of the council of Ministers relating to the administration of the affairs of the State and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Sadar-i-Riyasat may call for; and

(c) if the Sadar-i-Riyasat so rqeuires to submit for the consideration of the Council of

Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

45. (1) All excutive action of the Government shall be expressed to be taken in the name of the Sadar-i-Riyasat of the Jammu and Kashmir.

(2) Orders and other instruments made and executed in the name of the Sadar-i-Riyasat or of the Government of Jammu and Kashmir shall be authenticated in such manner as may be specified in the rules to be made by the Sadar-i-Riyasat, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Sadar-i-Riyasat or as the case may be, by the Government of Jammu and Kashmir.

PART VI
THE STATE LEGISLATIVE

COMPOSITION OF THE STATE LEGISLATURE

46. There shall be Legislature for the State which shall consist of the Sadar-i-Riyasat and two Houses be known respectively as the Legislative Assembly and the Legislative Council.

47. (1) The Legislative Assembly shall conist of one hundred members chosen by direct election from territorial constituencies in the State;
Provided that the Sadar-i-Riyasat may, if he is of opinion that women are not adequately represented in the Assembly nominate not more than two women to be members thereof.

(2) For the purposes of sub-section (I), the State shall be divided into territorial constituencies in such a manner that the ratio between the

population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.
Explanation: In this sub-section, the expression "Population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

(3) Upon the completion of each census, the number, extent and boundaries of the territorial constituencies shall be readjusted by such authority and in such manner as the Legislature may be law determine:
Provided that such readjustment shall not affect representation in the Legislative Assemb until the disolution of the then existing Assembly.

48. Notwithstanding anything contained in section 47, until the area of the State under the occuptions of Pakistan ceases to so occupied and the people residing in that area elect their representatives:

(a) twenty-five seats in the Legislative Assembly shall remain vacant and shall not be taken into account for reckoning the total membership of the Assembly; and
(b) the said area shall be excluded in delimiting the territorial Constituencies Under Section 47.

49. (I) There shall be reserved in the Lagislative Assembly for the Scheduled Castes in the State a number of seats which shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheudled Castes bears to the population of the State.
Explanation: In this sub-section:
(a) "population" has the same meaning as in subsection (2) of section 47 ; and
(b) "Scheduled Castes" means the castse, races or tribes or part of, or groups within castes, races

or tribes which are for the purposes of the Constitution of India deemed to be Scheduled Casts in relation to the State under the provisions of article 341 of that Constitution.

(2) The provisions of sub-section (1) shall cease to have effect on the expiration of a period of five years from the commencement of this Constitution:

Provided that such cesser shall not affect any representation in the Legislative Assembly until the dissolution of the then existing Assembly:

50. (1) The Legislative Council shall consist of thirty six members, chosen in the manner provided in this section.

(2) Eleven members shall be elected by the members of the Legislative Assembly from amongst persons who are residents of the Province of Kashmir and are not members of the Legislative Assembly.

(3) Eleven members shall be elected by the members of the Legislative Assembly from amongst persons who are residents of the Province of Jammu and are not members of the Legislative Assembly.

Provided that of the members so elected, at least one shall be a resident of Doda District and at least one shall be a resident of Poonch District.

(4) One member shall be elected by each of the following electorates, namely

(a) the members of municipal council, town area committees and notified area committees in the Province of Kashmir;

(b) the members of municipal council, town area committees, and notified area committees in the Province of Jammu;

(c) permanent residents who have been for at least three years engaged in teaching

in educational institutions recognised by the Government in the Province of Kashmir; and

(d) permanent residents who have been for at least three years engaged in teaching in educational institutions recognised by the Government in the Province of Jammu.

(5) Two members shall be elected by each of the following electorates, namely:

(a) the members of the Panchayats and such other local bodies in the Province of Kashmir as the Sadar-i-Riyasat may by order specify; and

(b) the members of the Panchayats and such other local bodies in the Province of Jammu as the Sadar-i-Riyasat may by order specify.

(6) Six members shall be nominated by the Sadar-i-Riyasat, not more than three of whom shall be person belonging to any of the socially or economically backward classes in the State, and the others shall be persons having special knowledge or practical experience in respect of matters such as literature, science, art, co-operative movement and social service.

(7) Elections under sub-section (2) and (3) shall be held in accordance with the system of proportional representation by means of the single transferable vote.

GENERAL PROVISIONS

51. A person shall not be qualified to be chosen to fill a seat in the Legislature unless he:

(a) is a permanent resident of the State;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age, and in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Legislature.

52. (1) The Legislative Assembly, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and not longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly ;

Provided that the said period may, while a Proclamation of Emergeney issued under article 352 of the Constitution of India is in operation, be extended by the State Legislature by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council shall not be subject to eissolution but as nearly as possible one-third of the members thereof shall retire, as soon as may be, on the expiration of every second year in accordance with the provisions made in that behalf by Legislature by law.

53. (1) The Sadar-i-Riyasat shall from time to time summon each House of the Legislature to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Sadar-i-Riyasat may from time to time...

(a) prorogue the House or either House;

(b) dissolve the Legislative Assembly.

54. (1) The Sadar-i-Riyasat may address either House of Legislature, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Sadar-i-Riyasat may send messages to either House, whether with respect to a Bill then bending in the Legislature, or otherwise and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

55. (1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Sadar-i-Riyasat shall address both Houses of Legislature assembled together and inform the Legislature of the cause of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters reffered to in such address.

56. Every Minister and the Advocate General shall have the right to speak in, and otherwise to take part in the proceedings, of both Houses and to speak in, and otherwise to to take part in the proceedings of, any Committee of the Legislature of which he may be named a member, but shall not, by virtue of this section, be entitled to vote.

OFFICERS OF THE STATE LEGISLATURE

57. The Legislative Assembly shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often at office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another

member to be Speaker, or Deputy Speaker, as the case may be.

58. A member holding office as Speaker or Deputy Speaker of the Legislative Assembly:

(a) shall vacate his office if he ceases to be a member of the Assembly;

(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly;

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days notice has been given of the intention to move the resolution.

Provided further that, whenever the Assembly is dissolved, the Speaker that not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

59. (1) While the office of Speaker is vacant the duties of the office shall be performed by the Deputy Speaker or, if the office of the Deputy Speaker is also vacant, by such member of the Assembly as the Sadar-i-Riyasat may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the Assembly the Deputy speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

60. (1) At any sitting of the Legislative Assembly, while any resolution for the removal of the

Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker shall not, though he is present, preside and the provisions of sub-section (2) of section 59 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in section 67, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

61. (1) The Legislative Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of the Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

(2) The provisions of sections 58,59 and 60 shall apply in relation to the Chairman and Deputy Chairman of the Legislative Council with the substitution of the words "Chairman" and "Council" for the words "Speaker" and "Assembly" respectively wherever they occur in those provisions, and with the omission of the further proviso to section 58.

62. There shall be pay to the speaker and the the Deputy Speaker of the Legislative

Assembly and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by Legislature by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Third Schedule.

63. (1) Each House of the Legislature shall have a separate secretarial Staff:
Provided that nothing in this sub-section shall be contrued as preventing the creation of posts common to both Houses.

(2) The Legislature may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of each House.

(3) Until provision is made by the Legislature under sub-section (2), the Sadar-i-Riyasat may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislativc Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said sub-section.

CONDUCT OF BUSINESS

64. Every member of the Legislative Assembly or the Legislative Council shall before taking his seat, make and sub-scribe before the Sader-i-Riyasat or some person appointed in that behalf by him an oath or affirmation according to the form set out for the purpose in the Fifth Schedule.

65. Save as otherwise provided by the rules of procedure of the House, the quorum to constitute a meeting of the Legislative Assembly and of the Legislative Council shall be twenty and ten re-

spectively.

66. A House of the Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

67. (1) Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

(2) The Speaker or Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

DISQUALIFICATIONS OF MEMBERS

68. (1) No person shall be a member of both Houses of the Legislature and provision shall be made by Legislature by law for the vacation by a person who is choosen a member of both Houses of his seat in one House or the other.

(2) If a member of a House of the Legislature resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant.

(3) If for a period of sixty days a member of a House of the Legislature is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:
Provided that in computing the said period of sixty days no account shall be taken of:

(a) such absence caused by reason beyond his control; or

(b) any period during which the House is prorogued or is adjourned for more than four consecutive days.

69. (1) A person shall be disqualified for being chosen and for being a member of the Legislative Assembly or Legislative Council:

(a) if he holds any office of profit under the Government of India or the State Government within the Union of India, other than an office declared by Legislature by law not to dis-qualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a permanent resident of the State or has voluntarly acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance to adherence to a foreign State;

(e) if he is so disqualified by or under any law made by the Legislature.

(2) For the purposes of this section, a person shall not be deemed to hold an office of profit under the Government of India, the State Government or any other State Government within the Union of India, by reason only that he is a Minister, or a Deputy Minister.

70. (1) If it is represented to the Speaker or the Chairman that a member of the Legislative Assembly or, as the case may be, of the Legislative Council is disqualified for being such a member under the provisions of section 69, or was so disqualified at any time since being

chosen as a member and the member does not admit that he is or was so disqualified, the question shall be referred to the High Court decision and its decision shall be final:

Provided that where the disqualification in question arises from circumstances which subsisted at the time of his being chosen as such member, no such representation as aforesaid shall be entertained:

(a) unless it is made after the expiration of the period by law for presenting an election petition calling in question the election of the member; and

(b) if such an election petition is pending or has been tried, unless the Speaker or Chairman as the case may be is satisfied that the question of the members' disqualification by reason of those circumstances has not been raised or, as the case may be, was not raised, in the proceedings on the election petition.

(2) Where on a representation made under sub-section (I) the member admits that he is or was disqualified under the provisions of section 69, or where on a reference made under that sub-section the High Court decides that the member is or was so disqualified, his seat shall thereupon become vacant.

71. If a person sits or votes as a member of the Legislative Assembly or the Legislative Council before he has complied with the requirements of section 64 or when he knows that he is not qualified or that he is disqualified for membership thereof or that he is prohibited from so doing by the provisions of any law made by the Legislature, he shall be liable in respect of each day on which he so sits or votes to a penalty of one hundred

rupees to be recovered as a debt due to the State.

POWERS, PRIVILEGES AND IMMUNITIES OF THE STATE LEGISLATURE AND ITS MEMBERS

72. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature.

(2) No member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof and no person shall be so liable in respect of the publication by or under the authority of a House of the Legislature of any report, paper, votes, or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature and of the members and the committees of a House of the Legislature shall be such as may from time to time be defined by Legislature by law, and until so defined shall be those of the Parliament of India and of its members and committees.

(4) The provisions of sub-sections (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak, in and otherwise to take part in the proceedings of, a House of the Legislature or any committee thereof as they apply in relation to members of that Legislature.

73. Members of the Legislative Assembly and the Legislative Council shall be entitled to receive such salaries and allownces as may from time to time be determined by Legislature by law and, until provision in that respect is so made, salaries and

allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly.

LEGISLATIVE PROCEDURE

74. (1) Subject to the provisions of sections 76 and 84 with respect to Money Bills and other Financial Bills, a Bill may originate in either House of the Legislature.

(2) Subject to the provisions of sections 75 and 76 a Bill shall not be deemed to have been passed by the Legislature unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature shall not lapse by reason of the prorogation of the House or House thereof.

(4) A Bill pending in the Legislative Council which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly or which having been passed by the Legislative Assembly, is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

75. (1) If after a Bill has been passed by the Legislative Assembly and transmitted to the Legislative Council :

(a) the Bill is rejected by the Council ; or

(b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it ; or

(c) the Bill is passed by the Council with amendments to which the Legislative

Assembly does not agree ; the Legislative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the legislative Assembly and transmitted to the Legislative Council:

(a) the Bill is rejected by the Council ; or
(b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it ; or
(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree ;

the Bill shall be deemed to have been passed by the Houses of the Legislature in the form in which it passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

(3) Nothing in this section shall apply to a Money Bill.

76. (1) A Money Bill shall not be introduced in the Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly, it shall be transmitted to the Legislative Council for its recommendations and the Legislative Council shall within a period of fourteen days from the date of its

receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may there upon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

77. (1) For the purposes of the part, a Bill shall be deemed to be a Money Bill if itc ontains only provisions dealing with all or any of the following matters namely:

(a) the imposition, abolition, remission, alteration or regulation of any tax ;

(b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;

(c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of money into or the withdrawal of moneys from any such Fund ;

(d) the appropriation of moneys out of the Consolidated Fund of the State ;

(e) the declaring of any expenditure to be expenditure charges on the consolidated Fund of the State, or the increasing of the amount of any such expenditure ;

(f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money ; or

(g) any matter incidental to any of the matters specified in clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature is a Money Bill or not, the decision of the Speaker of the Legislative Assembly thereon shall be final.

(4) There shall be endorsed an every Money Bill when it is transmitted to the Legislative Council under section 76 and when it is presented to the Sadar-i-Riyasat for assent under section 78, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

78. When a Bill has been passed by both Houses of the Legislature, it shall be presented to the Sadar-

i-Riyasat and the Sadar-i-Riyasat shall declare either that he assents to the Bill or that he withholds assent therefrom.

Provided that the Sadar-i-Riyasat may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the Sadar-i-Riyasat for assent, the Sadar-i-Riyasat shall not withhold assent therefrom.

PROCEDURE IN FINANCIAL MATTERS

79. (1) The Sadar-i-Riyasat shall in respect of every financial year cause to be laid before both Houses of the Legislature a statement of the estimated receipts and expenditure of the State for that year, in this part referred to as the "annual financial statement."

(2) The estimates of expenditure embodied in the annual financial statement shall show separately

(a) the sums required to meet expenditure described by this constitution as expenditure charged upon the Consolidated Fund of the State; and

(b) the sums required to meet other expenditure proposed to be made from the consolidated Fund of the State; and shal distinguish expenditure on revenue account from other expanditure.

(3) The following expenditure shall be expenditure

charged on the consolidated fund of the State:

(a) the emoluments and allowances of the Sadar-i-Riyasat and other expenditure relating to his office;
(b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and of the Chairman and the Deputy Chairman of the Legislative Council;
(c) debt charges for which the State is liable including interest, sinking fund charges and redemption charges. and other expenditure relating to the raising of loans and the service and redemption of debt;
(d) expenditure in respect of the salaries and allowances of the Judges of the High Court;
(e) any sums required to satisfy any judgement decree or award of any Court or arbitral tribunal;
(f) any other expenditure declared by this Constitution, or by Legislature by law, to be so charged.

80. (1) So much of the estimates as relates to expenditure changed upon the Consolidated Fund of the State shall not be submitted to the vote of the Legislative Assembly, but nothing in this sub-section shall be construed as preventing the discussion in the Legislature of any those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Sadar-i-Riyasat.

81. (1) As soon as may be after the grants under section 80 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated fund of the State of all moneys required to meet:

(a) the grants so made by the Assemly; and
(b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the Houses.

(2) No amendment shall be proposed to any such Bill in either House of the Legislature which will have the effect of varying the amount or altering the destination of any grant to made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under the sub-section shall be final.

(3) Subject to the provisions of sections 82 and 83, no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this section.

82. (1) The Sadar-i-Riyasat shall:

(a) if the amount authorised by any law made in accordance with provisions of section 81 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that

year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year; or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for the service and for that year,

cause to be laid before the Houses of the Legislature another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly a demand for such excess, as the case may be.

(2) The provisions of sections 79, 80 and 81 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the state to meet such expenditure or grant.

83. (1) Notwithstanding anything in the foregoing provisions of this Part, the Legislative Assembly shall have power:

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in section 80 for the voting of such grant and the passing of the law in accordance with the

provisions of section 81 in relation to that expenditure;

(b) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the services the demand cannot be stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year;

and the Legislature shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2) The provisions of sections 80 and 81 shall have effect in relation to the making of any grant under sub-section (1) and to law to be made under that sub-section as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.

84. (1) A bill or amendment making provision for any of the matters specified in clauses (a) to (f) of sub-section (1) of section 77 shall not be introduced or moved except on the recommendation of the Sadar-i-Riyasat, and a Bill making such provision shall not be introduced in the Legislative Council :

Provided that no recommendation shall be required under this sub-section for the moving of an amendment making provision for the

reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of the State shall not be passed by a House of the Legislature unless the Sadar-i-Riyasat has recommended to that House the consideration of the Bill.

PROCEDURE GENERALLY

85. (1) A House of the Legislature may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under sub-section (1), the rules of procedure and standing orders in force immediately before the commencement of this Constituent Assembly while discharging the functions of the Legislative Assembly shall have effect in relation to each House of the Legislature subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be.

(3) The Sadar-i-Riyasat, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses.

86. The Legislature may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in. the House of the Legislature in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if and so far as any provision of any law so made is inconsistent with any rule made by either House of the Legislature under sub-section (I)of section 85 or with any rule of standing order having effcct in relation to either House of the Legislature under sub-section (2) of that section such provisions shall prevail.

87. Business in the Legislature shall be transacted in Urdu or in English.

(1) Provided that the Speaker of the Legislative Assembly or the Chairman of the Legislative Council or person acting as such, as the case may be, may permit any member to address the House in Hindi, or if he cannot adequately express himself in any of the aforesaid languages, to address the House in his mother-tongue.

(2) The official records of the proceedings in the Legislature shall be kept in Urdu as well as in English.

(3) The text of all Bills and amendments there of moved in and of all Acts passed by the Legislature which shall be treated as authoritative, shall be in English.

88. No discussion shall take place in the Legislature with respect to the conduct of any Judge of the Supreme Court or of the High Court in the discharge of his duties.

89. (1) The validity of any proceedings in the Legislature shall not be called in question on the grounds of any alleged irregularity of procedure.

(2) No officer or member of the Legislature in whom powers are vested by or under this Constitution for regulating procedure or the conduct of Business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

90. No Act of the Legislature and no provision in any such Act shall be invalid by reason only that some recommendation required by this Constitution was not given, if assent to that Act was given by the Sadar-i-Riyasat.

Legislative power of the Sadar-i-Riyasat:

91. If at any time, except when both Houses of the Legislature are in session, the Sadar-i-Riyasat is satisfied that circumstances exist which render it necessary for him to take immediate action; he may promlugate such Ordinances as the circumstances appear to him to require.

Provided that the power of making Ordinance under this Section shall extend only to those matters with respect to which the Legislature has power to make laws.

(2) An Ordinance promulgated under this section shall have the same force and effect as an Act of the Legislature assented to by the Sadar-i-Riyasat, but every such Ordinance:

(a) shall be laid before both the Houses of the Legislature, and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or if before the expiration of that period a resolution disaproving it is passed by the Legislative Assembly and agreed to by Legislative Council, upon the resolution being agreed to by the Legislative Council, and

(b) may be withdrawn at any time by the Sadar-i-Riyasat.

Explanation:— Where the Houses of the Legislature are summoned to re-assemble on different dates the period of six weeks shall be reckoned from the latter of those dates for the purposes of this sub-section.

Breakdown of Constitutional Machinery.

92. (1) If at any time the Sadar-i-Riyasat is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the Sadar-i-Riyasat may by Proclamation:

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or excercisable by anybody or authority in the State;

(b) make such incidental and consequential provisions as appear to the Sadar-i-Riyasat to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provision of this Constitution relating to any body or authority in the State :

Provided that nothing in this section shall authorised the Sadar-i-Riyasat to assume to himself any of the powers vested in or exercisable by the High Court or to suspend in whole or in part the operation of any provision of this Constitution relating to the High Court.

(2) Any such Proclamation may be revoked or carried by a subsequent Proclamation.

(3) Any such Proclamation whether varied under sub-section (2) or not, shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate on the expiration of six months from the date on which it was first issued.

(4) If the Sadar-i-Riyasat by a Proclamation under this section assumes to himself any of the powers of the legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by an Act of the Legislature, and any reference in this Constitution to any Acts of or laws made by the Legislature shall be construed as including a reference to such law.

(5) No Proclamation under sub-section (1) shall be issued except with the concurrence of the President of India.

(6) Every Proclamation under this section shall, except where it is a Proclamation revoking a previous Proclamation, be laid before each house of the Legisiature as soon as it is convened.

PART VII
THE HIGH COURT

93. (1) There shall be a High Court for the State, consisting of a Chief Justice and two or more other judges.

(2) The High Court exercising jurisdiction in relation to the State Immediately before the commencement of this Constitution shall be the High Court for the State.

94. The High Court shall be a court of record and shall have all the powers of such a courts including the power to punish for contempt of itself or of the courts subordinate to it.
95. Every Judge of the High Court shall be appointed by the President by Warrant under his hand and seal after consultation with the Chief Justice of India, the Sadar-i-Riyasat, and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court and shall hold office until he attains the age of sixty years.
96. A person shall not be qualified for appointment as a Judge of the High Court unless he is a citizen of India, and:

    (a) has for at least ten years held a judicial office in the State or in any other part of India ; or
    (b) has for at least ten years been an advocate of the State High Court or of any other High Court in India or of two or more such courts in succession.

Explanation :—For the purposes of this Section in omputing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office after he became an advocate.

97. Every person appointed to be a Judge of the High Court, shall, before he enters upon his office, make an subscribe before the Sadar-i-Riyasat or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Fifth Schedule.

98. (1) There shall be paid to the Judges of the High Court such salaries as are specified in the Fourth Schedule.
    (2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of

absence and pension as may from time to time be determined by or under law made by the Legislature, and until so determined, to such allowances and rights as are specified in the Fourth Schedule :

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment:

99. (1) A Judge of the High Court may, by writing under his hand addressed to the President, resign his office.

(2) A Judge of the High Court shall not be removed from his office except by an order of the President passed after an address by each House of the Legislature supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the president in the same session for such removal on the ground of proved mis-beheviour or incapacity.

(3) The Legislature may by law regulate the procedure for the presentation of an address and for the investigation and proof of the mis-behaviour or incapacity of a Judge under sub-section (2).

100. (1) When the office of the Chief Justice is vacant or when the Chief Justice is by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

(2) When any Judge of the High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a

Judge of the Court until the permanent Judge has resumed his duties.

101. (1) The usual places of sitting of the High Court shall be Jammu and Srinagar.

(2) The Chief Justice shall, with the approval of the Sadar-i-Riyasat determine the number of Judges who shall sit from time to time at Jammu and at Srinagar for such period as may be deemed necessary.

(3) Whenever it appears to the Chief Justice that it is desirable that the High Courts hould hold its sitting at a place other than Srinagar and Jummu, one or more Judges of the High Court as determined by him shall, with the previous approval of the Sadar-i-Riyasat, sit at such place.

102. Subject to the provisions of this Constitution and to the provisions of any law for the time being in force, the jurisdiction of and the law administered in the High Court and the respective powers of the Judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof, sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.

103. The High Court shall have power to issue to any person or authority, including in appropriate cases any Government within the State, directions, orders or writs. including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purpose other than those mentioned in clause (2A) of article 32 of the Constitution of India.

104. (1) The High Court shall have superintendence and control over all courts for the time being subject to its appellate or revisional jusrisdiction and all such courts shall be subordinate

to the High Court.

(2) Without prejudice to the generality of the foregoing provision, the High court may:

(a) call for returns from such courts ;
(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
(c) Prescribe forms in which books, entries and accounts shall be kept by the officers of any such court.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein :
Provided that any rules made, forms prescribed or tables settled under sub-section (2) or sub-section(3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Sadar-i-Riyasat.

105. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution or the Constitution of India the determination of which is necessary for the disposal of the case, it shall withdraw the case and may:

(a) either dispose of the case itself; or
(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgement on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgement.

106. No person who had held office as a Judge of the

High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the State.

107. (1) The High Court shall have and use as occasion may require a seal bearing a device and impression of the State emblem with an exergue or label surrounding the same with the inscription:

"The seal of the High Court of Jammu and Kashmir"

(2) The seal shall be delivered to. and kept in the custody of, the Registrar or such other officer of the court as the Chief Justice may designate in this behalf.

108. (1) Appointments of officers and servants of the High Court shall be made by the Chief Justice of the court or such other judge or officer of the court as he may direct:
Provided that the Sadar-i-Riyasat may by rule require that in such cases as may be specified in the rule no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature, the conditions of service of the officers and servants of the High Court shall be such as may be preseribed by rules made by the High Court with the approval of the Sadar-i-Riyasat.

(3) The administrative expenses of the High Court including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall

form part of that Fund.

SUBORDINATE COURTS

109. (1) Appointment of persons to be, and the posting and promotion of, district judges in the State shall be made by the Sadar-i-Riyasat in consultation with the High Court.

(2) A person not already in the service of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or pleader and is recommended by the High Court for appointment.

110. Appointment of persons other than district judges to the judicial service of the State shall be made by the Sadar-i-Riyasat in accordance with rules made by him in that behalf after consulation with the Public Service Commission and with the High Court.

111. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of the State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this section shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

112. In this part...

(a) the expression "district judge" includes additional district judge, assistant district judge, sessions judge, additional sessions judge

and assistant sessions judge;

(b) the expression "judical service" means a service consisting exclusively of persons intended to fill the post of district judge, and other civil judicial posts inferior to the post of district judge.

113. The Sadar-i-Riyasat may be public notification direct that the foregoing provisions of this part and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to any persons appointed to the judicial service of the State Subject to such exceptions and modifications as may be spectfied in the notification.

PART VIII
FINANCE, PROPERTY AND CONTRACTS

114. No tax shall be levied or collected except by authority of law.

115. (1) Subject to the provisions of section 116, all revenues received by the Government, all loans raised by the Government by the issue of treasury bills, loans or ways and means advances and all moneys received by Government in repayment of loaned shall form one consolidated fund to be entitled "the Consolidated Fund of the State."

(2) All other public moneys received by or on behalf of the Goverement shall be credited to the public account of the State.

(3) No moneys out of the Consolidated Fund of the State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

116. The Legislature may by law establish a Contingency Fund in the nature of an imprest to be entitled

"the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Sadar-i-Riyasat to enable advances to be made by him out of such fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Legislature by law under section 82 or 83.

117. The State may make any grants for any public purpose, notwithstanding that the purpose is not one with expect to which the Legislature may make.

118. The custody of the Consolidated Fund of the State and the Contingency Funds of the State, the payment of moneys into such funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Fund received by or on behalf of the Government, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature and, until provision in that behalf is so made, shall be regulated by rules made by the Sadar-i-Riyasat.

119. All moneys received by or deposited with :

(a) any officer employed in connection with the affairs of the State in his capacity as such, other than revenues or public moneys raised or received by the Government; or

(b) any court within the State to the credit of any cause, matter, account or persons, shall be paid into the public account of the State.

120. Any property within the State which, if this Constitution had not come up into operation, would have accrued to the Government or any other authority in the State by escheat or lapse,

or as bona-vacantia for want of a rightful owner, shall vest in the State.

121. (1) The executive power of the State shall extend, subject to any law made by the State Legislature, to the carrying on of any trade or business, and to the grant, scale, disposition or mortage of any property held for the purposes of the State, and to the purchase or acquisition of property for those purposes and to the making of contracts.

(2) All property acquired for the purposes of the State shall vest in the State.

122. (1) All contracts made in the exercise of the executive power of the State shall be expressed to be made by the Sadar-i-Riyasat and all such contracts and all assurance of property made in the exercise of that power shall be executed on behalf of the Sadar-i-Riyasat by such persons and in such manner as he may direct or authorise.

(2) The Sadar-i-Riyasat shall not be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes any of enactment relating to the Government of the State heretofore in force, nor shall any person making or executing any such contract or assurance on his behalf be personally liable in respect thereof.

123. The Government may sue or be sued by the name of the State of Jammu and Kashmir and may, subject to any provisions which may be made by Act of the Legislature enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to its affairs in the like cases as the State might have sued or been sued if this Constitution had not been enacted.

PART IX
THE PUBLIC SERVICE

124. Subject to the provisions of this Constitution, the Legislature may by law regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the State :

Provided that it shall be competent for the Sadar-i-Riyasat or such person as he may direct, to make rules regulating the recruitment and the conditions of services of persons appointed, to such services and posts until provisions in that behalf is made by or under an Act of the Legislature under this section, and any rules so made shall effect subject to the provisions of any such Act.

125. (1) Except expressly provided by this Constitution, every person who is a member of a civil service of the State or holds any civil post under the State hold office during the pleasure of the Sadar-i-Riyasat.

(2) Notwithstanding that a person holding a civil post under the State holds office during the pleasure of the Sadar-i-Riyfisat, any contract under which a person, not being a member of a civil service of the State, is appointed to hold such a post may, if the Sadar-i-Riyasat deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part required to vacate that post.

126. (1) No person who is a member of a civil service of the State or holds a civil post under the State shall be dismissed or removed by an

authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :
Provided that this sub–section shall not apply:

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;
(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunty of showing cause ; or
(c) where the Sadar-i-Riyasat is satisfied that in the interests of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under sub-section
(4) The decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case my be, shall be final.

127. Until other provisional is made in this behalf under the constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution as service or post under the State, shall continue in force so far

as consistent with the provisions of this Constitution.

THE PUBLIC SERVICE COMMISSION

128. There shall be a Public Service Commission (hereinafter referred to in this Part as "the Commission") for the State.

129. (1) The Chairman and other members of the Commission shall be appointed by the Sadar-i-Riyasat :
Provided that as nearly as may be one-half of the members of the Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Government.

(2) A member of the Commission shall hold office of a terms of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier:
Provided that:

(a) a member of the Commission may, by writing under his hand addressed to the Sadar-i-Riyasat, resign his office;
(b) a member of the Commission may be removed from his office in the manner hereinafter provided.

(3) A person who holds office as a member of the Commission shall on the expiration of his term of office, be ineligible for re-appointment to that office.

130. (1) Subject to the provisions of sub-section (3), the Chairman or any other member of the Commission shall only be removed from his office by order of the Sadar-i-Riyasat on the ground of misbehaviour after the High Court

on reference being made to it by the Sadar-i-Riyasat, has, on inquiry held in that behalf, reported that the Chairman or such other member, as the case may be ought on any such ground to be removed.

(2) The Sadar-i-Riyasat may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the High Court under sub-section (1) until the Sadar-i-Riyasat has passed orders on receipt of the report of the High Court on such reference.

(3) Notwithstanding anything in sub-section (1) the Sadar-i-Riyasat may by order remove from office the Chairman or any other member of the Commission if the Chairman on such other member, as the case may be—

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment out side the duties of his office ; or

(c) is, in the opinion of the Sadar-i-Riyasat, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of the Commission is or becomes in anyway concerned or interested in any contract or agreement made by or on behalf of the Government of the State, the Governmant of India or the Government of any other State in India or participates in anyway in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty misbehaviour.

131. The Sadar-i-Riyasat may be regulations:

(a) determine the number of members of the Commission and their conditions of service; and

(b) make provision with respect to the number of members of the staff of the Commission and their conditions of service;

Provided that the conditions of service of a member of the Commission shall not be varied to his disadvantage after his appointment.

132. On ceasing to hold office the Chairman and the members of the Commission shall be ineligible for further office under the Government of the State, but a member other than the Chairman shall be eligible for appointment as a Chairman of the Commission.

Explanation:— For the purposes of this section; the office of Minister or Deputy Minister shall not be deemed to be an office under the Government of the state.

133. (1) It shall be the duty of the Commissions to conduct examinations for appointment to the services of the State.

(2) The Commission shall be consulted—

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidate for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government including memorials or petitions relating

to such matters;

and it shall be the duty of the Commission to advise on any matter so referred to them or on any other matter which the Sadar-i-Riyasat may refer to them:

Provided that the Sadar-i-Riyasat may make regulations specifying the matters in which either generally, or in any particular class of cases or in any particular circumstances, it shall not be necessary for the Commission to be consulted.

(3) Nothing in sub-section (2) shall require the Commission to be consulted as respects the manner in which a provision may be made by the State for the reservation of appointment or posts in favour of any class of permanent residents which in the opinion of the Government is not adequately represented in the services under the State.

(4) All regulations made under the proviso to sub-section (2) by the Sadar-i-Riyasat shall be laid for not less than fourteen days before each House of the Legislature as soon as possible after they made, and shall be subject to such modifications, whether by way or repeal or amendment, as the Legislative Assembly may make during the session in which they are so laid.

134. If the office of the Chairman of the Commission becomes vacant or if the Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall until some person appointed under sub-section (1) of section 129 to the vacant office has entered on the duties thereof or, as the case may be until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the

Sadar-i-Riyasat may appoint for the purpose.

135. An Act made by the Legislature may provide for the exercise of additional functions by the Commission as respects the services of the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

136. The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the members or the staff of the Commission, shall be charged on the Consolidated Fund of the State.

137. It shall be the duty of the Commission to present annually to the Sadar-i-Riyasat a report as to the work done by the Commission and the Sadar-i-Riyasat, on receipt of such report, shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature.

PART X
ELECTIONS

138. (1) The superintendence, direction and control of the preparation of the electroral rolls for, and the conduct of, the elections held under Part VI shall, be vested in an Election Commissioner to be appointed by the Sadar-i-Riyasat.

(2) The Sadar-i-Riyasat, may, for such period as he may deem necessary appoint one or more Deputy Election Commissioners to assist the Election Commissioner in the performance of the functions conferred by subsection (1).

(3) subject to the provisions of any law made by the Legislature, the Conditions of service of the Election Commissioner and the Deputy Election Commissioner shall be such as the

Sadar-i-Riyasat may by order specify.

(4) The Sadar-i-Riyasat may make acts viable to the Election Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commissioner by sub-section (1).

139. There shall be one general electoral roll for every territorial constituency for election to either House of the Legislature and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electroral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

140. The elections to the Legislative Assembly shall be on the basis of adult suffrage; that is to say, every person who is a permanent resident of the State and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the Legislature and is not otherwise disqualified under this Constitution or any law made by the Legislature on the ground of non-residence, unsoundness of mind, crime or corruptor illegal practice, shall be registered as a voter at any such election.

141. Subject to the provisions of this Constitution, the Legislature may from time to time by law make provision with respect to all matters relating to, or in connection with elections to either House of the Legislature, including the preparation of electoral rolls, the delimitation of constituencies, appointment of election tribunals and all other matters necessary for securing the due constitution of the two Houses.

142. Notwithstanding anything in this Constitution:

(a) the validity of any law relating to the delimitation of territorial constituencies for the purpose of electing members of the Legislative Assembly or the allotment of seats to such

constituencies, made or purporting to be made under section 141, shall not be called in question in any court ;

(b) no election to either House of the Legislature shall be called in question except by an election petition present to such authority and in such manner as may be provided for by or under any law made by the Legislature.

PART XI
MISCELLANEOUS PROVISIONS

143. (1) The Sadar-i-Riyasat shall not be answerable to any court for the exercise of performance of the powers and duties of his office or for any act done or purpoting to be done by him in the exercise and performance of those powers and duties.

Provided that nothing in this subjection-section shall be construed as restricting the right of any person to bring appropriate proceedings against the Government.

(2) No criminal proceedings whatsoever shall be instituted or continued against the Sadar-i-Riyasat in any court during his term of office.

(3) No process for the arrest or imprisonment of the Sadar-i-Riyasat shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the Sadar-i-Riyasat shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as Sadar-i-Riyasat, until the expiration of two months next after notice in writing has been delivered to the Sadar-i-Riyasat or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by

whom such proceedings are to be instituted and the relief which he claims.

144. The flag of the State shall be rectangular in shape and red in colour with three equidistant white vertical stripes of equal with next to the staff and a white plough in the middle with the handle facing the stripes.
The ratio of the length of the flag to its width shall be 3 : 2.

145. The official language of the State shall be Urdu, but the English language shall, unless the Legislature by law otherwise provides continue to be used for all the official purpose of the State for which it was being used immediately before the commencement of this Constitution.

146. The Sadar-i-Riyasat shall, as soon as may be, after the commencement of the Constitution establish an Academy of Arts, Culture and Language, where opportunities will be afforded for the development of Art and Culture of the State and for the development of Hindi, Urdu and other regional languages of the State specified in the Sixth Schedule.

PART XII
AMENDMENTS OF THE CONSTITUTION

147. An amendment of this constitution may be initiated only by the introduction of a Bill for the purpose in the Legislative Assembly and when the Bill is passed in each House by a majority of not less than two-thirds of the total membership of at the House, it shall be presented to the Sadar-i-Riyasat for his assent and, upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill :

Provided that a Bill providing for the aboli-

tion of the Legislative Council may be introduced in the Legislative Assembly and passed by it majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting :-

Provided further that no Bill or amendment seeking to make any change in :

(a) this section;
(b) the provisions of the sections 3 and 5; or
(c) the provisions of the constitution of India as applicable in relation to the State;

shall be introduced or moved in either house of the Legislature.

141 Sheikh Mohammad Abdullah to Maulana Abul Kalam Azad, 16 July 1953

Srinagar,
July 16, 1953

Respected Maulana Sahib,

Your letter of July 9 reached me yesterday. It appears certain misunderstanding has arisen in regard to the matters raised by me in my letter to Panditji (Pandit Nehru). There are two aspects of the problem of our State: one concerns the relationship arising out of the signing of the Instrument of Accession and the other is related to settlement between India, Paksitan and people of the State of the dispute about the future of the State. These two aspects may be called the internal and external aspects of the Kashmir problem. It appears no distinction is drawn between these two aspects in discussions about the dispute.

As is well known to you, the present relationship of the State is based on the document of Instrument of Accession. We, the people of Kashmir, regard the promises and assurances of the representatives of the Government of India, such as Lord Mountbatten and Sardar Patel, as surety for the assistance rendered by us in securing the signatures of Maharaja of Kashmir on the Instrument of Accession, which made it clear, that the internal

autonomy and sovereignty of the Acceding States shall be maintained except in regard to three subjects which will be under the Central Government.

I mention here in this connection the clear assurances given by Sardar Patel to Indian States on July 5, 1947. He observed "We do not want anything more from them than accession in these subjects, therein lies the good of the entire country. We respect their independence in all other matters."

At that time it clearly appeared that even handing over to the Centre of Defence, Communications and External Affairs implied no financial liability on the States. You would recall that Lord Mountbatten declared at the time of Independence in 1947 that "Instrument of Accession enables indian States to accede to either of the two Dominions without financial liability. Moreover, it is clearly stated in one of its clauses that the Central Government has no power under any circumstance to interfere with the internal autonomy and sovereignty of the Indian states."

Mr V P menon, whose opinion is considered quite authoritative in respect of Indian States observes, "Accession involves no financial obligation on the States. There is no intention to usurp their internal autonomy nor will they be forced to accept the Central Constitution."

It is regrettable that despite these clear declarations about these matters, Government of India has tried several times to impose finacial obligations on this State. This action of theirs is in clear violation of the assurances given by its responsible representatives. The State acquired such a status as a result of concessions allowed under its Instrument of Accession to India. When the Constituent Assembly of India proceeded to frame the Union Constitution there arose before it the question of the State. Our representatives took part in the last sessions of the Assembly and presented their point of view in the light to basic principles on wich the National Conference had supported State's accession to India. Our view-point drew appreciation and Article 370 of the Constitution came into being determining our position under the new Constitution. Sardar Patel again reiterated his assurances : "In view of the special problems confronting Kashmir we have enacted a special provision to continue the existing relationship between the Union and this State."

As time elapsed, it began to become clear that this special position was conceded with certain reservations and there arose objections against this 'special treatment.' It is important to note here that responsible representatives of the Government of India themselves gave rise to many doubts by terming this position as provisional, and the ensuing events confirmed us in our belief that the relationship between India and Kashmir arising out of the document of Instrument of Accession was not final. Even the Government of India entertained doubts about this position. During the debate on this important issue in the Constituent Assembly it emerged that apart from the limitations imposed by the Instrument of Accession the very relationship between India and Kashmir entailed certain responsibilities and many letters were exchanged to secure one's position resulting in Delhi Agreement.

I hope you are not unaware of the fact that even after Delhi Agreement responsible spokesmen of the Government of India declared that their ultimate objective was to secure complete merger of State with India and that they waited for appropriate time and conditions to bring that about. These statements reveal that Delhi Agreement could not provide a basis to finalise relationship between India and Kashmir; but that they provided temporary arrangement to finalise accession. The only difference between the Government of India and different elements in the country on the issue is whether to bring about the merger of the State with India now or after some time. This sums up the relationsip between Kashmir and India. It should not be forgotten that this is a temporary or provisional relationship as the contending parties have yet to settle the future of the State according to the wishes of the people. This temporary or provisional relationship - which we had hoped would strengthen our position - gradually underwent a change with restrictions imoposed upon the majority community in the State. The finalisation of this relationship between India and Kashmir caused concern among the people here and has given rise to doubts and fears in their mind. I am very happy to hear from you that the Government of India is willing to declare that the special position given to Kashmir will be made permanent and that the Government of India will be bound by it without any conditions. If such a declaration had been made at an appropriate time, it would undoubtedly have strengthened our hands and unified various

organisations and public opinion in the State and even if the masses had been asking about accession, a majority of them would have come out in favour of India. But unfortunately that was not to be. And the changes effected on several occassions in relationship between India and Kashmir greatly agitated the public opinion and also weakened our hands to a great extent. Although such a declaration would be welcome, it remains to be seen if it would draw the support of different sections of people in India and parties in Kashmir. You would appreciate that without such support, this declaration would not suffice to dispel the fears that have arisen in the minds of people of Kashmir. A big party in India still forcefully demands merger of the State with India. In the State itself Praja Parishad is threatening to resort to direct action if the demand for State's complete merger with India is not conceded. I do not understand how in the face of this stiff opposition, your proposed declaration would be able to reconcile different points of view that have arisen concerning the issue of Indo-Kashmir relationship. Assuming such an agreed solution to be possible, it is still to be seen if the resultant benefits would accrue equally and fairly to all sections of people in the State.

In my letter of July 4. I made it clear to Panditji (Pandit Nehru) that a majority of peole in the State feel that they have been completely ignored even in respect of matters which have passed under the control of Central Government. We will have to settle their future administration without loss of time in a practical way. Naturally only that solution will be satisfactory which is honourable and acceptable to all parties concerne.d Today the contending parties are, between themselves and internationally, committed to the principle of free and impartial plebiscite. Mixed populace would naturally give rise to many difficulties and real problems. We have carefully weighed the various pros and cons and have reached certain conclusions after careful deliberation over these matters. Bakshi Sahib and Beg Sahib have been directed to convey these decisions to you. It is now up to you and your colleagues seriously to examine them and decide if they lead to fair solution of the problem. If you do not consider these proposals practicable, then you should put forth your own proposal keeping in view the importance of internal and external aspects of the matter. No doubt we have had close and intimate relations between us for a long time and you and I both have high regards for them, but

when we have to decide issues of importance, regard for our mutual friendship should not be allowed to come in the way of their dispassionate consideration and discussion. I respect your views but wish at the same that you appreciate my difficulties. I can be a friend and loyal, as a responsible representative of people, if I keep to the fore the interests of people whose trust and confidence I enjoy. If I fail to gain the confidence of the people here I will not be able to render any service to my friends. I hope you will appreciate my position and accept my real views after careful deliberation.

Sincerely yours,
Sheikh Mohammed Abdullah

No. 142
Sheikh Mohammad Abdullah's statement in Kashmir conspiracy case, 1961

It is a small matter as to what happens to me. But it is no small matter that the people of Jammu and Kashmir suffer poverty, humiliation and degradation. It has been no small matter what they have endured for more than a decade and what they are enduring now. In fact the State has become a vast prison camp where the people are governed by heinous laws ande monstrous ordinances some of which entail death sentences while others provide imprisonment for ten years without making it incumbent on the executive authority even to apprise the victim of the charge, not to say of a judicial trial. Hundreds of Kashmiris have suffered incarceration for years since 9th August 1953, under these lawless laws; many were shot by the Army and the Police; hundreds were mained and disabled for life; hundreds again were involved in fictitious criminal cases in order to silence their voice, and yet it is claimed that there is stability! Be that as it may, these very events have demonstrated the justice of the demand for the immediate implementation of the pledge of the plebiscite given to the people by India, Pakistan and United Nations. The people of the State have not forgotten it and will never forget it.

If my imprisonment serves the cause to which I have dedicated myself, then it will be well with me and I shall take pride in thus serving my people and the land of my forefathers. My voice may be stifled behind the prison walls but it will continue to echo and

ring for all times to come. It can never be stopped. It is the voice of human conscience; it is the voice of the people. I am only a symnbol of people's undeniable aspirations and rights. What I am saying now will be repeated time and again, and it will be repeated time and again and it will go down in history.

Kashmir is dear to us because of its beauty and past traditions which are common to all who inhabit this land. But it is the future that calls to us and for which we labour; a future that will be the common heritage of all and in which we, as free men and women, will build the Kashmir of our dreams. Then only shal we be worthy of the land we dwell in.

Sd/-
Sheikh Mohd. Abdullah.

Special Jail, Jammu.
Dated : 28th June, 1961.

No. 143

Kashmir Political Conference Programme 1965

1. Kashmir Political Conference shall carry on the struggle to bring about a social order in the State in which everybody irrespective of religion. Class or sex, shall enjoy equal opportunities to progress socially, politically and economically;
2. The Conference recognises the fundamental rights of Press and Platform for all and sundry :
3. The Conference shall oppose communalism, sectarianism, reaction, obscurantism, imperialism, exploitation of man by man, subversion and violence of any form or shape and instead shall educate people on tolerance, brotherhood of man, unity and politics based on progressive ideals and internationalism;
4. The Conference shall guide and support the struggle carried on for the recognition of their birth-rights by all people, particularly by workers (skilled or unskilled) peasants, small traders, craftsmen and the victimized;

5. The Conference shall fight all those evils against which the people of this State have been struggling and which, unfortunately are existing today in a much more virulent form;

6. The Conference shall courageously continue the struggle which the people of Kashmir have been conducting from the year 1931 and for the furtherance of which present deadlock has become a great stumbling block:

7. The Conference regards it as its primary and sacred duty to safeguard the basic rights, religion and culture of the minorities. It (the Conference) has unflinching faith in the principle that the minority should be accorded not only a just but generous treatment. For the safeguard of these rights of the minorities the Conference pledges that it shall leave no stone unturned.

And with regard to accession issue the stand of the Kashmir Political Conference is that this issue, which has been pending for the last 18 years should be settled in accordance with the wishes of the people expressed through a free, fair and impartial Plebiscite

No. 144
Tashkent Declaration

The Prime Minister of India and the President of Paksitan, having met at Tashkent and having discussed the existing relations between India and Pakistan hereby declare their firm resolve to restore normal and peaceful relations between their countries and to promote understanding and friendly relations between their peoples. They consider the attainment of these objectives of vital importance for the welfare of the 600 million people of India and Paksitan.

(*i*) The Prime Minister of India and the President of Pakistan agree that both sides will exert all efforts to create good neighbourly relations between India and Pakistan in accordance with the United Nations Charter. They reaffirm their obligation under the Charter not to have recourse to force and to settle their disputes through peaceful means. They considered that the interests of peace in their region and particularly in the Indo-Pakistan

subcontinent and indeed, the interests of the peoples of India and Pakistan were not served by the continuance of tension between the two countries. It was against this background that Jammu & Kashmir was discussed, and each of the sides set forth its respective position.

(*ii*) The Prime Minister of India and the President of Pakistan have agreed that all armed personnel of the two countries shall be withdrawn not later than 25 February 1966 to the positions they held prior to 5 August 1965, and both sides shall observe the cease-fire terms on the cease-fire line.

(*iii*) The Prime Minister of India and the President of Paksitan have agreed that relations between India and Paksitan shall be based on the principle of non-interference in the internal affairs of each other.

(*iv*) The Prime Minister of India and the President of Paksitan have agreed that both sides will discourage any propaganda directed against the other country and will encourage propaganda which promotes the development of friendly relations between the two countries.

(*v*) The Prime Minister of India and the President of Pakistan have agreed that the High Commissioner of Paksitan to India will return to their posts and that the normal functioning of diplomatic missions of both countries will be restored. Both Governments shall observe the Vienna Convention of 1961 on Diplomatic Intercourse.

(*vi*) The Prime Minister of India and the President of Pakistan have agreed to consider measures towards the restoration of economic and trade relations, communications as well as cultural exchanges between India and Paksitan, and to take measures to implement the existing agreements between India and Pakistan.

(*vii*) The Prime Minister of India and the President of Paksitan have agreed that they will give instructions to their respective authorities to carry out the repatriation of the prisoners of war.

(*viii*) The Prime Minister of India and the President of Pakistan have agreed that the two sides will continue the discussions of questions relating to the problems of refugees and evictions/illegal immigrations. They also agreed that both sides will create conditions which will prevent the exodus of people. They further agree to discuss the return of the property and assets taken over by either side in connection with the conflict.

(*ix*) The Prime Minister of India and the President of Paksitan have agreed that the two sides will continue meetings both at highest and at other levels of matters of direct concern to both countries. Both sides have recognised the need to set up joint Indian-Pakistani bodies which will report to their Governments in order to decide what further steps should be taken.

The Prime Minister of India and the President of Paksitan record their feelings, deep appreciation and gratitude to the leaders of the Soviet Union, the Soviet Government and personally to the Chairman of the Council of Ministers of the USSR for their constructive, friendly and noble part in bringing about the present meeting which has resulted in mutually satisfactory results. They also express to the Government and friendly people of Uzbekistan their sincere thankfulness for their overwhelming reception and generous hospitality.

They invite the Chairman of the Council of Ministers of the USSR to witness this declaration.

Prime Minister of India
Lal Bahadur Shastri

President of Pakistan
Mohammaed Ayub Khan

Tashkent, 10 January 1966

No. 145
Shimla Agreement
Agreement on bilateral relations between the Government of India and the Government of Pakistan

(I) The Government of India and the Government of Pakistan are resolved that the two countries put an end to the conflict and confrontation that have hitherto marred their relations, and work for the promotion of a friendly and harmonious relationship and the establishment of durable peace in the sub-continent, so that both countries may henceforth devote their resources and energies to the pressing task of advancing the welfare of the peoples.

In order to achieve this objective, the Govenrment of India and the Government of Pakistan agreed as follows :

1. That the principles and purposes of the character of the United Nations shall govern relations between the two countries.
2. That the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means agreed upon between them. Pending the final settlement of any of the problems between the two countries neither side shall unilaterally alter the situation and both shall prevent the organisation, assistance or encouragement of any acts detrimental to the maintaince of peaceful and harmonious relations.
3. That the prerequisite for reconciliation, good neighbourliness and durbale peace between them is commitment by both the countries to peaceful co-existence, respect for each other's territorial integrity and sovereignty and non-interference in each other's internal affairs, on the basis of equality and mutual benefits.
4. That the basic issues and causes of conflicts which have bedevilled the relations between the two countries for the last twenty-five years shall be resolved by peaceful means.
5. That they shall always respect each other's national unity, territorial integrity, political independence and sovereign equality.

6. That in accordance with the Charter of the United Nations they will refrain from the threat or use of force against the territorial integrity, political independence of each other.

(II) Both Governments will take all steps within their power to prevent hostile propaganda directed against each other. Both countries will encourage the dissemination of such information as would promote the development of friendly solution between them.

(III) In order to progressively restore and normalise relations between the two countries step by step it was agreed :

(*a*) Steps shall be taken to resume communications, postal, telegraphic, sea, land including border posts and air links including overflights;

(*b*) Appropriate steps shall be taken to promote travel facilities, the nationals of other country;

(*c*) Trade and co-operation in economic and other agreed fields will be resumed as far as possible;

(*d*) Exchange in the fields of science and culture will be promoted.

(IV) In order to initiate the process of the establishment of durable peace, both the Governments agreed that;

(*i*) Indian and Pakistani forces shall be withdrawn to their side of the international border;

(*ii*) In Jammu and Kashmir, the line of control resulting from the ceasefire of December, 17, 1971-shall be respected by either side. Neither side shall seek to alter it immediately, irrespective of mutual difference and legal interpretations. Both sides further undertake to refrain from the threat or the use of force in violation of this line.

(*iii*) The withdrawals shall commence upon entry into force of this agreement and shall be completed within a period of thirty days.

(V) This agreement shall subject to satisfaction by both countries in accordance with their respective constitutional procedures, and will come into force with effect from the date which the instruments of ratification are exchanged.

(VI) Both Governments agree that their respective heads will

meet again at a mutually convenient time in the future and that, in the meanwhile, the representatives of the two sides will meet to discuss further the modalities and arrangements for the establishment of durable peace and normalisation of relations, including the questions of repatriation of prisoners of war and civilian internees, a final settlement of Jammu and Kashmir and the resumption of diplomatic relations.

Indira Gandhi
Prime Minister, Republic of India

Zulfikar Ali Bhutto
President Pakistan

No. 146
The Kashmir accord statement of Smt. Indira Gandhi Prime Minister, in Parliament on Jammu & Kashmir on February 24, 1975

In Purusance of Government's policy to secure the active co-operation and involvement of all democratic, secular and progressive forces in the country it was considered desirable to have a dialogue with Sheikh Mohammad Abdullah. Hon'ble members are aware that Sheikh Abdullah had played a notable part in the freedom struggle and in the accession of the State of Jammu and Kashmir to the Indian Union. He formed and headed the Government of the State for a number of years after independence. Despite the differences which led to the subsequent estrangement it seemed clear from the public statements made by Sheikh Abdullah as well as personal talks with him that his commitment to basic national ideals and objectives had remained unchanged. He reaffirmed that the accession of the State to the Indian Union was final and irrevocable. His main area of concern was about the legal and constitutional changes made after August, 1953.

It was decided that Mirza Afzal Beg, whom Sheikh Abdullah named for the purpose, and Shri G. Parthasarthi, whoom I entrusted with the task, should examine these changes in depth and make appropriate recommendations. After extensive discussions they reached agreement on various points which are incorporated in the Agreed Conclusions, a copy of which is placed on the Table of the House. These conclusions formed the subject matter of further discussions at a political level in which Sheikh Abdullah, Syed Mir. Qasim, the Chief Minister of the State, and Sardar Swaran

Singh participated. As a result of these understanding has been reached as disclosed in the letters exchanged between me and Sheikh Abdullah, copies of which are placed on the Table. I shall reffer to certain basic features of the understanding.

The Agreed conclusions have been formulated within the framework of the Constitution of India. The constitutional relations between the State of Jammu and Kashmir and the Union will continue as it has been and the extension of further provisions of the Constitution to the State will continue to be governed by the procedure prescribed in Article 370. There will be no weakening of the ties which exist between the Union of India and its constituent units of which the State of Jammu and Kashmir is one. The existing jurisdiction of the Centre to deal with activities directed towards questioning or disrupting the sovereignty and territorial integrity of India, or bringing about cession or secession of any part of the territory of India from the Union, will also continue. It has also been agreed that any amendment of the Constitution of the State on certain specified matters of importance will not become effective unless the assent of the President is obtained. The Agreed Conclusions seek to reassure the State that in case the State Government comes up with any proposal to change any Central law made after 1953 on matters in the Concurrent List such as social welfare measures, cultural matters, social security, procedural laws and the like, the grant of assent to the Bill will be sympathetically considered.

A proposal was made by Mirza Afzal Beg that the jurisdiction of the Supreme Court in relation to the State should be curtailed. This was not accepted as it is considered important that the Supreme Court should continue to have original and appellate jurisdiction in the matter of writs, appeals and other matters. However, it was agreed by collateral letters (copies of which are placed on the Table) that the provision in Article 132(2) enabling the Supreme Court to grant special leave on the refusal of a certificate by the High Court need not apply to the State. Action on this will, however, he taken only when the State Government comes up with a proposal in this behalf.

Hon'ble Members will notice that, the question of nomenclature of the Governor and the Chief Minister not be settled. This is a matter which is provided for in the State Constitution which at

present used the expression "Governor" and "Chief Minister." A change in the nomenclature can be made only by the amendment of the State Constitution by the State Legislature. So far as the Chief Minister is concerned, there should be no objection to the adoption of the designation 'Wazir-e-Azam' in the State if the Legislture of the State of Jammu and Kashmir amends the Constitution accordingly-Until this is done, the present designation would continue.

Sheikh Abdullah was very anxious that, to start with, the constitutional relationship between the State and the Centre should be as it was in 1953 when he was in power. It was explained to him that the clock could not be put back in this manner. Mirza Afzal Beg pressed for the transfer of provisions relating to the Fundamental Rights to the State Constitution the removal of the supervisiona nd control of the Election Commission of India over elections to the State Legislature, and the modification of Article 356 to require the State Government's concurrence before imposing President's Rule in the State. It was not found possible to agree to any of these proposals. I must say to the credit of Sheikh Abdullah that despite his storng views on these issues, he has accepted the Agreed Conclusions.

The State Government is in agreement with the understanding reached and the approach in regard to political cooperaiton with Sheikh Sahib and his followers, as being in the interests of the State and the country.

Hon'ble Members will have seen the statement made by Mirza Afzal Beg on February 6, 1975 to the effect that in the changed circumstances plebiscite has become irrelevent and that the name and objectives of the Plebiscite Front have to be changed accordingly. We have been informed that the statement was endorsed at the recent meeting of the Executive Committee of the party and that Mirza Afzal Beg has been entrusted with the task of calling a meeting of the General Body of the Front for taking the necessary follow up action isn this regard.

As is disclosed in the letters exchanged, Sheikh Abdullah has stated in clear terms that the future of Jammu and Kashmir lies with India and that as one who cherishes the ideals of democrcy, secularism and socialism, he has come forward with his co-operation

with a view to further strengthen the bond between the State and the Union. We have every confidence that he will make his own distinctive contribution to the task of strengthening the nation and sustaining its ideals.

The settlement that has been reached is an entirely domestic matter. It has been the endeavour of Government to find satisfactory solutions for political-problems in a spirit of conciliation. The manner in which differnces with Sheikh Abdullah have been resolved shows the utility of the functioning of our democracy. It is my sincere hope that the agreement will open new era of understanding and cooperation with those in the State of Jammu and Kashmir who had not associated themselvs with the main stream of national life during the last two decades. It will also amply demonstrate the identity of interests and ideals of the people of the State with those in the rest of India and mark a milestone in the onward march of our nation.

THE KASHMIR ACCORD
1975

(The following is the text of the Accord, signed by G. Parthasarathy and Mirza Mohammed Afzal Beg, as representative of the then Prime Minister Mrs. Indira Gandhi and Sheikh Mohammad Abdullah at New Delhi on November 13, 1974.)

1. The State of Jammu and Kashmir, which is a constituent unit of the Union of India, shall in its relations with the Union, continue to be governed by Article 370 of the Constitution of India.
2. The residuary powers of legislation shall remain with the State; however, Parliament will continue to have power to make laws relating to the prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution.
3. Where any provision of the Constitution of India had been applied to the State of Jammu and Kashmir with adaptations and modifications such adaptations and modifications can be altered or repeated by an Order of the President under

Article 370, each individual proposal in this behalf being considered on its merits; but provisions of the Constitution of India already applied to the State of Jammu and Kashmir without adaptation or modification are unalterable.

4. With a view to assuring freedom to the State of Jammu and Kashmir to have its own legisaltion on matters like welfare measures, cultural matters, social security, personal law, and procedural laws, in a manner suited to the special conditions in the State, it is agreed that the State Govenrment can review the laws made by Parliament or extended to the State after 1953 on any matter relatable to the Concurrent List and may decide which of them in its opinion, needs amendment or repeal. Thereafter, appropriate steps may be taken under Article 254 of the Constitution of India. The grant of President's appropriate steps may be taken under Article 254 of the Constitution of India. The grant of President's assent to such legislation would be sympathetically considered. The same approach would be adopted in regard to the laws to be made by Parliament in future under the Provisio to Clause 2 of that Article; the State Government shall be consulted regarding the application of any such law to the State and the views of the State Government shall receive the fullest consideration.

5. As an arragnement reciprocal to what has been provided under Article 368, a suitable modification of that Article as applied to the State should be made by Presidential Order to the effect that no law made by the Legislature of the State of Jammu and Kashmir, seeking to make any change in or in the effect of any provision of the Constitution of the State of Jammu and Kashmir relating to any of the undermentioned matters shall take effect unless the Bill, having been reserved for the consideration of the President, receives his assent; the matters are :

   (*a*) the appointment powers, functions, duties, privileges and imunities of the Governor; and

   (*b*) the following matters relating to Elections, namely, the superintendence, direction and control of Elections by the Election Commission of India, eligibility for

inclusion in the electoral rolls without discrimination, adult suffrage, and composition of the Legislative Council, being matters specified in Sections 138, 139, 140 and 50 of the Constitution of the State of Jammu and Kashmir.

No agreement was possible on the question of nomenclature of the Governor and the Chief Minister and the matter is therefore remitted to the principals.

Mirza **G.**
Parthasarathi
Mohammed Afzal Beg
New Delhi
November 13, 1974.

No. 147
Kashmir Accord S.M. Abdullah to Indira Gandhi 1975

(Copy of a letter of Sheikh Mohd. Abdullah to the Prime Minister.)

3, Kotla Lane,

New Delhi,
Dated : 11-2-75

My Dear Prime Minister,

I have seen the text of the conclusions reached between Shri G. Parthasarthi and Mirza Mohammad Afzal Beg on the various constitutional issues concerning the Centre-State relationship between the State of J&K and the Union of India. I have studied the document and have also had discussions with you. As you are aware, it is my view that the constitutional relationship between the Centre and the State of J&K should be what it was in 1953. Nevertheless, I' am happy to say that the Agreed Conclusions provide of good basis of my co-operation at the political level and for Centre-State relationship.

I appreciate that the main purpose of the dialogue was to remove misapprehension on either side to ensure that the bond

between the Union and the State is further strengthened and to afford to the people of the State full scope for understanding social welfare and development measures.

The accession of the State of J&K to India is not a matter in issue. It has been my firm belief future of J&K lies with India because of the comon ideals that we share. I hope you would appreciate that the sole reason for my agreeing to co-operate at the political and governmental levels is to enable the State Govenrment to initiate for the well-being of the people of the State which I have always considered as my sacred trust. It will be my constant endeavour to ensure that the State of J&K continues to make its contribution to the sovereignty, integrity and progress of the Nation. By the same token, I am sure that the Central government would cooperate with the State Govenrment fully in respect of measures to be undertaken by the State Government to further the progress and welfare of the people of the State as an integral part of India.

The country is passing through a critical period and it is all the more necessary for all of us who cherish the ideals of democracy, secularism and socialism, to strengthen your hands as the leader of the Nation and it is in this spirit that I am offering my whole-hearted co-operation.

Shrimati Indira Gandhi
Prime Minister of India
New Delhi.

Yours Sincerely,
Sd/-
(S.M. Abdullah)

No. 148
Kashmir Accord
Indira Gandhi to Sheikh Mohammad Abdullah
1975

New Delhi,
February 12, 1975

Dear Sheikh Saheb,

I am happy to receive your letter expressing your concurrence with the conclusions reached between Mirza Mohammad Afzal Beg and Shri G. Parthasarthi, on certain constitutional aspects of the

relationship of the Centre with the State of Jammu & Kashmir and offering your wholehearted cooperation at the political and governmental level to further promote the well-being of the people of the State of J&K. I am aware of your views of Centre-State relationship in respect of the State of J&K, I have already explained to you that the clock cannot be put back and we have to take note of the realities of the situation. I am appreciative of the spirit in which you have expressed your agreement with the terms of the Agreed Conclusions.

The Agreed Conclusions have been examined and I am in a position to inform you that such appropriate executive action may be necessary to give effect to them will be taken. I have been in close touch with the Chief Minister of the State who is in agreement with the approach in regard to political cooperation with you and the understanding reached about the relationship of the State with the Union.

The Central Government would undoubtedly continue to co-operate with the State Govenrment fully in respect of measures to be undertaken by the State Government to further the progress and welfare of the people of the State, which is of equal concern to the Central Government.

As pointed out by you, the country is passing through a critical period and it is a matter of great satisfaction to me that a person of your stature who made an outstanding contribution during the freedom struggle should come forward again and co-operate in the task of strengthening the national and sustaining the ideals.

Yours sincerely,
Sd/-
(Indira Gandhi)

Sheikh Mohd. Abdullah
3 Kotla Lane,
New Delhi.

No. 149
Kashmir Accord, Mirza Afzal Beg to G. Parthasarthy, 1975

Copies of Collateral letters **November 13, 1974.**

Dear Shri Parthasarthi,

In the course of our discussions, I made a proposal that appeals to the Supreme Court under Article 132 of the Constitution of India from the decision of the High Court of Jammu and Kashmir, should lie only on a certificate under clause (1) of that Article. After a detailed discussion on this, you had agreed to the proposal and stated that it can be implemented by order under Article 370 making suitable modification or the modifications made under Article 367.

Kindly acknowledge receipt of this letter.

Yours Sincerely,
Sd/-
(Mirza Mohammad Afzal)

Shri G. Parthasarthi,
31, Aurangzeb Road,
New Delhi.

No. 150
Kashmir Accord, G. Parthasarthy to Mirza Afzal Beg. 1974

Dear Beg Saheb,

I acknowledge receipt of your letter dated the 13th November, 1974. The proposal referred to therein was discussed between us at length and agreed to by me. It can be implemented by an appripriate Order of the president in accordance with the procedure prescribed under Article 370.

Mirza Mohammad Afzal Beg,
Camp : New Delhi.

Yours Sincerely,
Sd/-
(G. Parthasarthi)

No. 151
Solemn Pledge, Jammu and Kashmir Liberation Front
1979–80

1. Military objectives of the Jammu and Kashmir Liberation Front :

(*a*) Raising of the liberation army of the Muslims to launch the armed struggle for the liberation of Kashmir from the Indian occupation;

(*b*) Training of Muslim youth and students in Azad Kashmir and Pakistan and procuring of arms for the liberation army;

(*c*) Preparation of the Muslim youth and students in Kashmir occupied by India, for their participation in the armed struggle against Indian imperiliasm, imparting militaty training to them, providing arms to them and establishing a unified command to lead the armed struggle;

(*d*) Drawing up a strategy to establish necessary communication network in the occupied Kashmir;

(*e*) Organising the forces, which are at present fighting for the liberaiton of Kashmir into a united front to ensure the participation of Muslim masses in the armed struggle;

(*f*) Building military pressure on Indian defence forces in order to force the Government of India to implement the resolution of the United Nations and ensure the realisation of the dream of the Muslims in Kashmir to decide their own destiny.

2. Political objectives of the Jammu and Kashmir Liberation Front

India grabbed Kashmir by fraud and force in 1947, when the sons of the soil and the followers of religious injunction rose in revolt against the rapacious and oppressive rule of the Hindu ruler, who was conspiring with the Hindu communalists to accede to India against the wishes of the predominant Muslim majority population of the State. The Riyasat of Jammu and Kashmir is geographically a part of Pakistan, its rivers flow into this land of the pious and its people are an inseparable part of the Muslim nation of Pakistan. Kashmir is a Muslim State and the aspirations

of the Muslims are linked with the attainment of Nizam-i-Mustafa (Islamic Governance) in its length and breadth so that the Muslims live in peace and brotherhood under the canopy of Islam. We are comitted to the ideology of Islam. Our aim is the realisation of Islamic way of life. We do not contribute to any other ideology. The goal to be achieved is :

(*a*) Unification of the two parts of Kashmir, by demolishing the artificial dividing line created by the presence of the armies of Indian occupation;

(*b*) Self-determination for the people to decide the future of the State.

No. 152
Telegram Maulana Sayeed Masoodi to Moraraji Desai Prime Minister, 1977

Forest Lodge
Srinagar, Kashmir
June 30, 1977

Express Telegram

Shri Morarji Desai
Prime Minister
New Delhi

Your assurance about removal of Partisan officials, complete impartiality of administration and firmness of police in dealing with hooligans remain unfulfilled. Terrorisation of citizens especially Janata workers continues ceaselessly with police connivance. Some big officers encourage communal, sectional and anti-India propaganda. Atmosphere surcharged with religious and secessionist frenzy. Apprehensions deepen that at certain places polling booths will be captured by National Conference hoodlums or they will threaten voters and compel them either not to vote or vote for conference candidates. Reports received from many constituencies indicate police arrangements totally inadequate to make poll free and fair. Under these circumstances party leaders feel dismayed, the best I can do is to bring grave situation to your notice.

M.S. Masoodi
Convener Janata Party

153
Statement of
Prem Nath Bazaz, J&K Janata Party 14 July 1977

New Delhi
July 14, 1977

The following statement has been issued by Prem Nath Bazaz, spokesman of the Ad Hoc Committee of J&K Janata party :

"For the first time during the past thirty years the elections in Kashmir were contested by parties commanding public support on issues which deeply concerned the electorate. For once there was a serious challenge to the monopolistic leadership of Sheikh Abdullah and his party, National Conference, from secular-minded sections most of whom in the Valley consisted of Muslims, who had rallied under the banner of Janataa Party. If ever politically conscious Muslims were emotionally involved in pro-India movement they were those supporting Janata candidates in the elections.

"In March last when the State Congress Legislative Party withdrew its support to Abdullah government and the Sheikh was ousted from power he was an unpopular figure. Apart from the somersaults that he had turned on State's accession issue since 1947, the nepotism, corruption and misuse of power for which he was roundly blamed, he had lost support of the State people. The need of a new dynamic leadership which could be trusted to deliver goods was felt by large numbers of disillusioned persons.

With the announcement of the formation of Ad Hoc Committee of the J&K Janata Party under the leadership of the universally respected eldelry statesman, Maulana Mohammad Sayed Masoodi, thousands of political workers defected form National Conference and Congress to join the new party. By the end of May Janata in Kashmir had become a force to be reckoned with; it was anti-Abdullah wave which was erroneously confused with Janata wave in the rest of the country, that made it so.

"Sheikh Abdullah at once recognised the seriousness of the situation. He made repeated attempts to form alliance with the central leadership of the Janata Party but failed. With the phenomenal growth of Kashmir Janata unit he became desperate and resorted to fascist methods to meet the challenge. He revived

the almost forgotten slogan of piebiscite and gave a call for secession of the State from India if need be. Since minority communities like Shias, Hindus, and followers of Mirwaiz Farooq called Bakaras solidly supported Janata he inflamed Shia-Sunni, Hindu-Muslim and Sher-Bakara animosities. Above all, he roused religious hatred and base tribal passions of the Muslim masses against Janata Party. He publicly and repeatedly charged that Janata was Jan Sangh in a new grab the hands of whose leaders were soaked with Muslim blood. He accused Janata Muslim leaders of refraining from recitation of Koran at the beginning of public meetings. The National Conference workers went from door to door with the holy scripture in hand compelling Muslims to swear by it that they will vote for Conference candidates who will defend them against Hindu aggression and not for Janata men who stand for Hindu India with the ultimate aim of subjugating Muslims.

"Having thus poisoned the Muslim mind, Sheikh Abdullah organised a band of hooligans, convicted criminals and militant young men to terrorize opposition by violent acts. The Janata offices were raided, workers beaten, many injured, their houses ransacked and shops looted. Protests of Janata leaders proved unavailing, a voice in the wilderness.

"In the beginning of June anti-Abdullah wave began to subside and anti-India wave took its place. Again, the people outside Kashmir were wrong and the Indian national Press mistaken to confuse it with Abdullah wave. The anger against Abdullah's misdeeds existed but it was over-shadowed by the hatred for India which had been systematically generated by the National Conference. Unfortunately the Muslim personnel of the Kashmir administration who were the foremost in condemning Abdullah a couple of months earlier, now became his supporters. The Kashmir Police condoned Conference rowdyism. For reasons unknown, Governor L K Jha adopted the same line and failed to maintain law and order when innumerable cases of goondaism were brought tc his notice.

"Still feeling his position insecure, Sheikh Abdullah feigned serius illness. Jha sounded alarm to the central leadership that the great hero" was breathing his last. Immediately came messages of sympathy from the highly placed including the Prime Minister Morarji Desai who was then in London. Forgetting the healthy tradition of the Indian Army to remain aloof from politics, tow

top ranking generals called at the "sick" man's house not only to pay their own homage but affection from rank and file. In the midst of a toughly fought election it gave setback to the propaganda of the Janata Party. This was what Sheikh had desired to achieve. As subsequent events have proved he was never seriously ill but the central Janata leaders were taken in by the ruse played on them.

"The Conference rowdyism culminated on the black 3rd July when the elections were held in the Valley. Despite the pleadings of the Janata leaders no adequate police arrangements were made to inspire confidence in the average voter that he was safe to cast vote as he wished. In almost all constituencies disturbers of peace were let loose, polling agents of Janata candidates were humiliated and beaten in the presence of police and polling officials, many booths were captured by Conference men and false votes cast; thousands of Janata supporters desisted from casting vote for fear of reprisals. The protests of Janata men were neither heard nor acknowledged. On counting day seals of many ballot boxes were found broken and the ballot papers tampered with. Frequently it was discovered that a number of ballot papers were folded together and put in the ballot boxes. In protest many a candidate withdrew their cooperation and retired from the counting tables.

"No sooner was the fake victory of the National Conference declared on 4th July than a reign of terror descended on the Valley. Though an order under Section 144 Cr. P.C. was promulgated by the Authority, bit and small processions of hoodlums went round beating Janata men and women, tearing their clothes and robbing them of valuables; the Janata candidates and prominent workers became special target of the hooligans.

Hundreds of houses were pelted, windows and doors damaged; shops were looted and life of peaceful citizens made miserable. There was harassment on a large scale in the Valley. All Janata offices were ransacked, flags hauled fown and burned along with the sign boards. Organisations such as Kashmir Motor Drivers Association were attacked, their property seized and their leaders forced to raise the Conference flags in place of the Janata flags. Some office bearers of the bodies were arrested to make room for pro-Conference men. Nearly a hundred Janata workers were injured in the process, some of them seriously.

Afraid of danger to their lives, eighty-five families in Srinagar have evacuated their homes and taken shelter in safer areas; many of them are lodged in Islamia School. Though intimation has been received of such evacuation from other parts of the valley exact figures are not available.

"It is grim story of Sehikh Abdullah's "triumph" in the elections which have been declared as peaceful and ordelry by the Indian Govenrment and the National Press.

"We demand the institution of a powerful commission to go into the sordid affair to find out the truth for the information of the nation to enable tit to make a fair appraisal."

P.N. Bazaz.

No. 154
B.K. Nehru to Farooq Abdullah
27 January 1984

"As you are well aware, for several weeks past the possible defectors from among the National Conference MLAs have been suggesting to me that if and when 13 of them come to me in a body expressing their lack of confidence in you and your ministry, together with an assurance of support from the 26 members of the Congress Legislature Party in the Assembly I should forthwith dismiss your government and instal a new Chief Minister in whom the combination of the Congress Party and the defectors (who would then form the majority) have confidence.

I have consistently told them that I would not do so because the proper place to display their want of confidence was on the floor of the Legisaltive Assembly. I said that I would, instead, ask you to advise me to summon the Assembly at short notice so that the motion of no confidence in you coud be properly moved, properly debated and properly voted upon.

They were hesitant to follow this course for two reasons. They were afraid, firstly, that in the interval between their coming to me and the vote in the House their houses would be burnt and their families attacked by the Police under your orders. They were afraid, secondly, that the Rules of the House would be so bent as to preclude a fair and free debate and vote from taking place. I

recognised the validity of these fears on both counts but nevertheless felt that the maintenance of constitutional property was paramount and the risks should be taken. I learnt—not from you-that this morning as soon as the Assembly resumed its session after hearing the Governor's Address, when only certain routine business was slated to be transacted, you introduced a motion expressing the confidence of the House in yourself, that in breach of the normal rules the 7-day notice reqired for such a motion was waived and that an immediate vote was insisted upon and taken without debate while the Congress Party was actually in process of leaving the House in protest. This motion of confidence was carried without dissent from among the members left in the House.

Under the rules a motion of no confidence is now barred from being moved in the Assembly while the present session lasts. I write to say that in these circumstances, if and when such a delegation were to come to me and I were convinced through counting of heads- a procedure which I have hitherto stubbornly refused to follow - that you had lost your majority I would have no option but to dismiss your government as all proper constitutional process has now been unfairly pre-empted."

No. 155
Letter Presented to Governor Jagmohan by 12 Members of Legislative Assembly, 1984.

Letter presented to Jagmohan by 12 Members of the Legislative Assembly, namely, Munshi Habibullah Kargil; Mohammad Dilawar Mir, Rafiabad; Hissam Din Bandey, Hazratbal; Sheikh Abdul Jabbar, Kangan; Talib Hussain, Rajouri; Dr. Mehboob Beg, Anantnag; Hakim Mohd. Yasin, Khansahib; Mohammad Khalil Jawhar, Bandipur; Gurbachan Kumari Rana, nominated; Ghulam Hassan Mir, Gulmarg; Khem Lata Wakhlu nominated; and Sonaullah Dar, Pulwama.

"Your Excellency, we hope , is aware of the internal rift in the ruling National Conference. In September 1982, consequent upon the sad demise of our beloved Leader Sher-i-Kashmir we had elected Dr. Farooq Abdullah as the Leader of National Conference Legislature Party by a unanimous decision in the hope that he will uphold and follow the path and the principles laid down by his father. Dr. Farooq Abdullah, during the last nineteen

months or so, has miserably failed in following the principles and the programme of the party and its late Leader. He first dismissed the entire Cabinet of Sher-i-Kashmir on the pretext that it was a corrupt Cabinet. This resulted in maligning the name of our great leader who presided over that Cabinet for a long time.

Throwing to winds the directions of Sher-i-Kashmir and the party, he entered into an unholy alliance with anti-social elements and fundamentalists who had been fought by Sher-i-Kashmir for as long a period as 52 years. The party structure was changed beyond recognition and undesirable elements were pampered and the real workers ignored -so much so that G.M. Shah who had given his life and blood for the party and who suffered for decades along with Sher-i-Kashmir was expelled from the party along with D.D. Thakur, a close confidant of the late Leader, and a large number of other senior leaders. At this stage, we the undersigned expressed our solidarity with G.M. Shah as we felt that he alone could save the party from disintegration. We unmistakably indicated to Dr. Abdullah that he had lost our support and that we no longer could support his Government and its policies.

In the Assembly meeting on January 27, 1984, we apprehended that Dr. Abdullah, having known that he had lost the support of the majority of the House, out of sheer desperation would recommend dissolution of the Assembly or obtain a resolution of the Council of Ministers to that effect. That day Dr. Abdullah and his Ministers threatened us and under duress obtained a vote of confidence which is not our voluntary vote.

We submit that Dr. Abdullah and his Government having lost the support of the majority of the Lower House of the Legislature has no moral or constitutional right to recommend the dissolution of the House. We, therefore, pray that any such recommendations as and when made may kindly be ignored and rejected.

We would further submit that Shri G.M. Shah in whose leadership we have total faith and who has the confidence of the other sections of the House also be called upon to form a Government which shall be stable and which we are sure would carry out the policy and the programmes of our Leader, Sher-i-Kashmir."

No. 156
Wireless Message from Jagmohan to the President of India, 1984

"Law and order and security of the State seriously threatened by activists/disruptionists and also by the political instability that has been caused by the withdrawal of support to the Chief Minister and his Ministry by 13 MLAs (12 of the ruling National Conference and 1 Independent). With the withdrawal of support by these MLAs, Dr. Frooq Abdullah has lost absolute majority in the Legisaltive Assembly. I am satisfied that a situaiton has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the J&K. Constitution, I want to issue proclamation immediately under Section 92 of the J&K. Constitution assuming to myself all or any of the functions of the Govenrment of the State vested in or exercisable by any body or authority in the State. Solicit your concurrence immediately under sub-section 5 of Section 92 of the Constitution. Position serious."

No. 157
Jagmohan to Dr. Farooq Abdullah
1984

"My Dear Chief Minister,

13 MLAs of the Legislative Assembly of J&K (12 of the National Conference Party and one Independent) have approached me in person this morning. They told me, and have given in writing, that they have withdrawn their support to your Government and pledged their support to Ghulam Mohammad Shah, MLC. Simultaneously, Moulvi Iftikhar Hussain Ansari, MLA, and leader of the Congress(I) Legislature Party, J&K, has informed me in writing and in person that the Congress(I) Legislature Party, having a strength of 26 MLAs, has decided to support Ghulam Mohammad Shah. A copy each of the communications is enclosed.

I am satisfied that you no longer enjoy the majority support of the Legislative Assembly and have, therefore, forfeited the right to continue as Chief Minister and to head the Government.

In these circumstances, I advise you to submit your resignation as Chief Minister forthwith.

With kind regards,

Yours Sincerely,
(Sd.) Jagmohan

P.S. : We have since met and discussed the matter. You advised me to impose Governor's Rule under section 92 of the J&K Constitution and keep the Legislative Assembly in suspended animation. I shall be grateful if you could kindly send me your confirmation in this regard in writing immediately."

No. 158
Dr. Farooq Abdullah to Jagmohan
1984

"Excellency,

I am in receipt of your letter D.O. No. GS-I (PAG) dated 2nd July 1984, as also its enclosures. I have considered the mater in depth in consultation with the colleagues of my Cabinet and wish to inform you that democratic traditions require that the question of loss of confidence should always be tested on the floor of the House. In fact, the letter addressed to Your Excellency by signatories makes reference to a letter shown to have been addressed to you on 28th June 1984, the contents whereof are not known to me. Anyway, I don't feel you are not in the know of the anti-defection law in the State which disqualifies a Member for violation of the Whip of the party. 12 signatories including 2 nominated members have lost their right of vote and as such all that they have written cannot be of any consequence. I would on behalf of the Cabinet and myself advise you to immediately summon the session of the Legislature so that confidence of the Legislature enjoyed by me is demonstrated.

In the latter part of the letter you have referred to discussion which you had with me early this morning that I advised you to impose Governor's Rule under section 92 of the Constitution. No doubt we discussed alternatives but all those options are available on my failure to show that I enjoy confidence of the Legislature which can be demonstrated on the floor of the House. I therefore reiterate that the Assemhbly be summoned forthwith so that on my failure to demonstrate confidence of the House we can next consider the options available to us under the Constitution of the State. If,

however, you do not want to conform to this democratic method I on behalf of my Cabinet would request you to accept our advice of dissolving the Legislative Assembly so that we go back to our people.

With kind regards, **Yours sincerely,**
(Sd.) Dr. Farooq Abdullah"

No. 159
Farooq Abdullah to Jagmohan
7 July 1984

"Dear Govenror Sahib,
With greetings.

An announcement was made on 2nd July 1984 simultaneoulsy with the swearing in of new leader of twelve defector-members of Legislative Assembly that Assembly session would be called to test the majority support of the leader of this defector group. It is 7th July 1984 today and no notice has been issued so far which apparently is bound to delay convening of the Legislative Assembly beyond one month. At this stage the defectors are engaged in further efforts to tamper with the basic loyalities of the captive group functioning as members of the Council of Ministers and others who have refused to fall in line with their nefarious anti-people activities. You did not accept my advice to convene the Assemhly immediately against all accepted norms of democratic behaviour and for reasons best known to you and instead placed newly called in man under obligation to have confidence of the House verified within one month which solemn understanding he is not complying with.

The leaders of All-India Opposition too understandably have taken up this matter with you during their meeting in the interests of restoration of people's faith in organic law of our State and the country. I am told that you assured the All-India delegation that steps will be taken to have the Assembly convened within a reasonable time-outer limit having been fixed viz., 30 days from 2nd July 1984. I request you to have the commitment solemnly given fulfilled as soon as it can be.

With regards, **Yours sincerely,**
(Sd.) Dr. Farooq Abdullah"

No. 160
Jagmohan to Editor Times of India 22 August 1984

"To
The Editor,
The Times of India,
New Delhi.

Dear Sir,

In regard to Shri L.P. Singh's article — Govenror's Role in Crisis—published in your esteemed daily of August 18, 1984, I wish to state the following :

On Shri L.P. Singh's own reckoning, he has been out of touch with the Kashmir affairs for about 14 years. Would it, therefore, not have been appropriate for him to refrain from expressing any opinion, particularly when such an opinion, coming from a person fo his background and experience, is likely to be taken as authoritative?

So far, I have resisted the temptation of correcting superficial or misinformed criticism. The nature of some of the facts, moreover, is such that they cannot be disclosed to public at this stage. But, in view of what is being commented upon even in responsible quarters, it seems necessary to put at least some of the records straight, notwithstanding the limitations imposed upon me by my office and the confidentiality of certain facts.

Is the Governor's Committee's recommendation, to which Shri L.P. Singh has referred, an end in itself? Should the Governor ignore the political and administrative environment in which he is called uponh to exercise his judgement? Should he hot be guided by the solid evidence which is in his possession about the behavioural pattern of certain individuals, groups and communities? Should he sidetrack the national interests and requirements of public order and tranquility and adhere to the narrow confines of a Committee's observation which has neither any validity in law and Constitution nor bears the stamp of Government and Parliamentary acceptance? Should he seek transitory applause from a section of the press or public for his 'demonstrable impartiality' or have courage to take upright though unpopular decisions? I am convinced

that if the situation had been viewed from a narrow angle, without considering the totality of the circumstances, a highly tragic situation, as in Punjab and Assam, would have developed, involving huge loss of life and property and grave damage to national integrity. I hardly need to point out that 'the only thing necessary for the triumph of evil is for good men to do nothing.'

Shri L.P. Singh has referred to the recommendations of the Governors' Committee only in part. Is it not a fact that the same Committee categorically stated that it would be unwise and unrealistic to provide any rigid guidelines to the Governors, and that the Governor should come to his own conclusion keeping in view the circumstances of the case? Did not the Committee say that no two cases could be identical? If Jammu and Kashmir's case does not fall in the special category, then I cannot conceive of any other case which would.

Shri L.P. Singh has omitted to state that the then Janata Government made it clear to the Lok Sabha on November 17, 1977, and the Rajya Sabha on November 18, 1977, that it did not consider it necessary to accept the aforesaid recommendations in regard to the summoning of the Assembly. If calling of the Assembly in every such case is so sacrosanct, as is now being made out, why did not the Government and Parliament say so clearly in November 1977? Why did it not even consider it necessary to issue a letter of advice to the Governors in this regard?

Has anyone tried to think what facts were disputed that needed to be resolved by the Assembly vote? In this case, the facts were not disputed. That Dr. Farooq Abdullah was in minority was beyond doubt. He himself did not, and could not, contest it. All evidence was provided to him in writing and in person and nothing was done behind his back. In fact, by referring to his opponents as defectors, he admitted that they had turned against him. Then, like an obscure 'mantra,' the meaning of which nobody bothers to enquire, why is it being chanted again and again that the Assembly should have been convened?

No responsible Governor could have ignored the stark realities of the situation. Allowing the minority Government of Dr. Farooq Abdullah to continue, even for a short while, would have implied turning a blind eye to the well-grounded apprehensions that 'instant' rallies would have been organised, communal and extremist elements

exploited, public hysteria whipped up, administrative machinery misused, the 'traitors' dealt with appropriately, and the police made to say later on that, in view of the 'spontaneous' upsurge and understandable anger of the people, it could do nothing. In this connection, it would not be out of place to recall what Shri B.K. Nehru wrote to Dr. Farooq Abdullah in January 1984: "Your opponents were afraid, firstly, that in the interval between their coming to me and the vote in the House their houses would be burnt and their families attacked by the Police under your orders. They were afraid, secondly, that the Rules of the House would be so bent as to preclude a fair and free debate and vote from taking place. I recognised the validity of these fears on both counts."

If mere clerical or post office role is to be assigned to the Governor, then he, particularly the Governor of Jammu and Kashmir, would be nothing but a mute spectator, watching from the sideline the sordid game of the disruptionists.

'Even the angels are not all of one opinion.' But I have no doubt that as all the facts about the nursing of extremists, disruptionists and communal forces, to be exploited for such eventualities as arose on July 2, 1984, comes to public notice, it would be fully appreciated that, having regard to the general powers of the Governor, the particular facts of this case, and the political and administrative environment in which I was called upon to exercise my judgement, the decision taken by me to dismiss Dr. Farooq Abdullah's ministry was constitutionally valid, administratively justified and in the overall national interest and in the interest of public order and tranquility. At the moment, I only feel 'a certain gloomy pride in having dared to do the right.'

Yours faithfully,
(Sd.) Jagmohan"

No. 161
Governor of Jammu and Kashmir Jagmohan to Prime Minister Rajiv Gandhi, 12 February 1985.

"This is about firing and other incidents that took place in Srinagar yesterday in connection with observance of first death anniversary of Maqbool Butt.

On surface, the trouble is connected with the Maqbool Butt day. But the underlying cause is the increasing strength of the anti-national forces which received a tremendous boost by the sudden decision of the Chief Minister to relese Syed Ali Shah Geelani, leader of the Jama'at-i-Islami, and his followers. This decision was announced by the Chief Minister on December 6, 1984, in a dramatic fashion. Even when the issue involved the security of the State,* he did not care to consult me or the Central Government. In fact, I came to know about the decision only from the newspaper reports.

Ever since the aforesaid release, Geelani has been making highly objectionable speeches, preaching Islamic fundamentalism and accusing India of forcible occupation of Kashmir. Of late, he has been organising training camps in which ring leaders of Jama'at-i-Islami have been exhorting the party cadres to propagate that by joining Pakistan, the Kashmiris would have not only served the cause of Islam but also secured, like Paksitanis, a large number of jobs in the Muslim world.

What is most disconcerting is that, notwithstanding the secessionist and treasonable activities which have been mentioned even in the otherwise sketchy reports of the State intelligence, no action has been taken against Geelani. This has naturally emboldened other anti-national groups like Mahaz-e-Azadi, People's League Kashmir National Liberation Front, etc.

I may take this opportunity to indicate that, in violation of Article 44 of the J&K. Constitution and the Rules of Business, the Chief Minister is keeping me in the dark with impunity by witholding information even with regard to vital matters involving the security of the State and creation of parallel police cadres etc.

For the consumption of the public and the Central Government, the Chief Minister has been making a few pro-national statements.

In actual practice, however, he has been doing everything to encourage communal, pro-autonomy and secessionist forces. These forces are more pernicious than others, because they preach Islamic fundamentalism mixed with pro-Pak sentiments. Once these forces become part of the Kashmiri ethos, permanent damage will be done. No amount of subsequent political engineering would be able to solve the basic problems that would be created. Whatever solution may be thought of, the present situation needs to be remedied."

Rajiv Gandhi, unfortunately, remained insensitive to all such pleadings and warnings.

The other parties and groups also found it expedient to make use of Islamic fundamentalism to secure quick political gains. These included the People's League, the Islamic Jama'at-i-Tulba, the Islmic Students' League, the Umat-e-Islam, the Tahfazul-ul-Islami, the Islamic Study Circle, the Mahaz-e-Azadi, and the Anjumane Itehade Musalmeen. The People's League which was founded on September 30, 1974, by Nazir-Ahmed Wani, one of the accused in Al Fatah case, and the leadership of which was subsequently taken over by Farooq Rehmani and Shabir Shah, propagated that the duty of the followers of Islam was to throw out the Indians from Kashmir. The Islamic Jama'at-i-Tulba, the students' wing of the Jama-at-i-Islami, launched a special drive, under the leadership of Tajamul Islam, to indoctrinate the Muslim youth. The Islamic Students' League's constitution itself declared that 'soldier's life was a basic part of Islam.' Umat-e-Islam, which was founded by Dr. Qazi Nissar on March 4, 1986, did everything to fan the fire of fanaticism and in the process to build leadership for himself amongst the ignorant Muslim masses on narrow religious emotions.

In pursuit of political power, the normal course of which was blocked by an over-possessive and manipulative oligarchy, every political party or group tried to outdo the other in plucking whatever healthy roots were there in the soil and sowing the new seeds of fanaticism and fundamentalism. The tragic harvest is there for everybody to see.

No. 162
Proclamation of Emergency
P-1-90 of 1990

"P-1/90 of 1990 : Whereas I, Jagmohan, Governor of the State of Jammu and Kashmir, am satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution of Jammu and Kashmir (hereinafter referred to as the State Constitution);

Now, therefore, in exercise of the powers conferred by section 921 of the State Constitution and of all other powers enabling me in that behalf, and with the concurrence of the President of India, I hereby proclaim that I

(*a*) assume to myself all the functions of the Government of the State and all powers vested in or exercisable by any body or authority (other than the powers vested in or exercisable by the High Court) in the State; and

(*b*) make the following incidental and consequential provisions which appear to me to be necessary or desirable for giving effect to the objects of this Proclamation, namely.

(*i*) the operation of the following provisions of the State Constitution is hereby suspended, namely, sections 35 to 41 (both inclusive), so much of section 43 as relates to the allocation among the Ministers of the business of the Government of the State, section 44, so much of section 53 as relates to the stipulation of a maximum intervening period of six months between the last sitting in one session of the legislature and the date appointed for its first sitting in the next session, sections 51 to 57 (both inclusive), clauses (*b*) and (*c*) of seciton 58 and the first provisio thereto, sections 59 and 60, sub-section (2) of section 61 so far as it relates to clause (*c*) of and the first proviso to section 58 and to section 60, sections 65, 66, 67, 71 and 72, 74, 75 and 76, sub-sections (3) and (4) and (5) of section 79, sections 80, 81 and 82, sub-section (2) of section 83, sections 84 to 88 (both inclusive) and so much of section 187 as relates to the laying of the report with a

memorandum before the Legislature of the State;

(*ii*) in the exercise of the powers of the Legislature to make laws under or by virtue of this Proclamation, I shall prepare such bills as I deem necessary and declare in respect of any bill so prepared that I assent thereto;

(*iii*) in the exercixse of the powers of the Legisaltive Assembly to make grants under sub-section (1) of section 83 of the State Constitution, I shall, as often as I may deem it necessary and pending due appropriation of law,

(*a*) make, by notification in the official Gazette, grants in advance in respect of the estimated expenditure or grants in respect of supplementary or additional expenditure for the period during which this Proclamation may be or is in force,

(*b*) make by notification in the official Gazette grants for meeting any expected demands, and

(*c*) make by notification in the official Gazette exceptional grants which form no part of the current service of the financial year, and

(*iv*) any reference in the State Constitution to Acts or laws of or made by the Legislature of the State shall be constructed as including a reference to Acts or Laws made in exercise of the powers of the Legislature of the State by me under this Proclamation and the Jammu and Kashmir General Clauses Act, 1977, as in force in the State shall have effect in relation to any such Act or Law as if it were an Act of the Legislature of the State.

Place : Jammu **(Sd.) Jagmohan,**
January 19, 1990 **Governor, Jammu & Kashmir"**

No. 163
Dissolution of Assembly
Jagmohan, Governor of Jammu and Kashmir to Home Minister, Government of India 20 February 1990

Dear Home Minister,

I am writing to you with reference to our telephonic talk regarding my decision to dissolve the State Assembly.

I do not think there is anything to be unhappy about. In this connection, I wish to make the following points clear :

(*i*) The Jammu and Kashmir Constitution empowers the Governor, and no one else, to dissolve the State Assembly.

(*ii*) Under the Constitution, the Governor is reuqired to act in his own good conscience and exercise his judgement and take the decision independently.

(*iii*) Without dissolution, there was no moral legitimacy for the use of force on an extensive scale. Nor was it possible for me and the Advisers to secure the obedience of our orders from the local officials who were constantly being fed with the impression that Dr. Farooq Abdullah and his colleagues were coming back after the role of 'butcher' has been played by the Governor.

(*iv*) The statements issued by Dr. Farooq Abdullah, asking for inquiry at the international level and comparing Kashmir with a Nazi camp, were inciting the people to create more and more violence. A verbatim copy in Urdu (with English translation) of one such statement issued by him is enclosed.* A note setting out the implications of this statment is also enclosed.

(*v*) As far back as January 30, I had clearly indicated my views in regard to the dissolution. If there were any reservations in this regard, I could have been clearly told so beforehand.

The other points in regard to the justification of my decision are contained in he press note on the subject. A copy of the said

press note is enclosed.

I have no doubt that my decision is administratively, morally and constitutionally, correct and would considerably help in removing misgivings of the people and restoring peace and normalcy in the State. Some relaxation of tension in the atmosphere is visible even today. The Constitution, to the faithful allegiance of which I have taken oath, precludes me from taking into consideration any extraneous factor.

Yours Sincerely
(Sd.) Jagmohan

Shri Mufti Mohammad Sayeed
Home Minister
Government of India
New Delhi

No. 164

Report of Ved Marwah and Jamil Qureshi to Jagmohan on the situation in Jammu and kashmir, 1990

(Extract)

"The people, almost the whole lot of them, believed that Kashmir was going to be either independent or become a part of Pakistan in January 1990 itself. In fact, January 26 was promised by the militants to be a day of supposed deliverance when the new People's Republic of Independent Kashmir was going to be declared and foreign correspondents invited to be witnesses to the birth of the new State. The writ of the Government did not run beyond and generally outside the confines of their own command room circles. The morale of the police was in their boots and there was a revolt right within the police when the Jammu and Kashmir Armed Police surrounded and held their own seniors to ransom at gunpoint Far from going after the extremists, the policemen themselves were aiding and abetting them."

No. 165
White Paper on Kashmir Joint Human Rights Committee
(Extracts)

Hindus in Kashmir constituted a self-contained class of people who lived at low levels of income compared to the lowest fringes of the powerful and affluent Muslim middle class. Most of them owned their houses, with only 6% of their families living in rented quarters. Most of the houses had small and large compounds which were traditionally considered to be a necessity in Kashmir. In the villages as well, where they mostly lived on small agricultural holdings and orchards, they owned their own houses, kitchen gardens, rared livestock, mainly cattle, and generally earned additional income from professional services, like dispensing medicine, teaching, book-keeping etc. 'A sizeable section of the community worked as wage-earners, domestic servants, and errand-boys.

The Hindus of Kashmir had a rich cultural heritage. They possessed numerous religious endowments and shrines and ancient temples built during the reign of the Hindu monarchs. There were many famous centres or religious pilgrimage like the Amar Nath Cave, Kheer Bhawani shrine on the outskirts of the Srinagar city, the Sun Temple at Martand, Mattan, the Sharika Temple on the flank of the Hari Parvat hill and the Gangabal shrine, considered to be as sacred by the Hindus in Kashmir, as the Ganges. The religious endownments were once rich and prosperous and held in their possession Maufi and Mukharari lands, enough to meet their expenses. Much of the land attached to the temple shrines and religious endowments was nibbled away by the Muslim partisans with the connivance of the State administration under the cover of the land reform legisaltion which exempted religious endowments from its operation.

Like the other tradition bound, endogamous and native peoples, the Hindus, with an incredibly long history, extending into pre-historic, proto-Aryan, latter stone age cullture, formed an inseparable part of the cultural identity of Kashmir and its personality. Because of their endocrine cultural patterns, local ritual structures blended with the Vedic religious precept and practice

and their pride in Sanskrit civilization, they had a deep sense of attachment and belonging to their land which they addressed in their worship as the "Mother, who had given them birth." How should they have suddenly torn themselves from their racial moorings, abandoned their homes and their temples and quit the temperate and salubrious climate, in which generations of their ancestors had lived, to throw themselves on the charity of the world in the arid tropics of Jamu and beyond? How should they have fallen so low in their own esteem that they should have walked out of their homes on the bidding of Jagmohan, who sought their evacuation to clear the decks for an onslaught on the Muslims?

The Hindus were scattered all over the valley and it is unbelievable that in the chaos, which engulfed the valley in January 1990, with the Muslim crusaders having spread all over, Jagmohan's spies could have moved around to organise the exodus of the Hindus. The stark truth is that as Jagmohan flew into Kashmir a day after he was sworn in as the Governor of the State, hundreds of vehicles carrying the Hindus fugitives were speeding down the treacherous Banihal road towards Jammu.

The Hindus loved their land, perhaps with a greater spiritual commuitment than the Muslims, because they were not imposters and theyt had lived in the valley, generation after generation, over thousands of years. The had a greater sense of national belonging with its roots in the geography of their land. They were no conquerors; they had risen from their soil. A survey based upon stratified sampling, structured questionaires and interviews was conducted to ascertain the circumstances in which the Hindus population in Kashmir evacuated 56 per cent of the respondents living in towns, thirty eight per cent living in the villages and 12 per cent living in the remote villages, stated that they were marked for death and according to the information they received, they had a day and a half to make good their escape. Thirty eight per cent of the respondents living in the town,s 13 per cent respondents living in the villages and 12 per cent respondents living in the remote villages, stated that they received information that their names figured in the hit-lists of various terrorists organisations. Forty three per cent of the respondents living in the towns, 28 per cent respondents living in villages, and 22 per cent living in remote villages, stated that they heard rumours of their names having

figured in the hit-list of the various terrorist organsiations Sixty eight per cent respondents living in the towns, 42 per cent respondents living in the villages and 8 per cent respondents living in the remote villages stated that they received threats from various terrorist organisations through emissaries. Six per cent of the respondents living in the towns and 2 per cent respondents living in villages stated that they received instructions to appear before Muslim tribunals after Friday prayers, in the local mosques, to explain their anti-struggle conduct. Less than one percent of the respondents accepted that they appeared before the tribunals. The rest of the respondents, so summoned, left their localities before the appointed date for hearing A scholar of sociology and history, resident of Srinagar city, stated in an interview : "I was already informed that a Naka, a ring had been thrown around the locality where I lived, with the intention to gun me down, whenever I came out of my house. I did not stir out, and as they day wore by, the fear gripped me that with the fall of the night, the terrorists would raid my house. As the night set in, I sneaked out of my house, wrapped in a blanket. It had begun to drizzle and I was perhaps, able to give a slip to the people who possibly had abandoned their watch. The information that I would be waylaid was secretly communicated to me by a young lad of my own community. I left my home and took refuge at a fairly distant place in the house of a relative. The next day the militants sent distant a delegation of the lcoal mosque committee to my home. Most of the men in the delegation were known to my people. In polite words the members of the delegation told my family members that reports about my anti-struggle activities had reached the militant forces, and therefore, it would be right for me to appear before the Muslim congretion on Friday, where my explanation would be considered sympathetically and the members of the delegation would ensure that no harm was done to me. My family members assured the delegation that I would appear before the congregat judgement. During the ensuring night, my people quitely shifted out of the house with the least little belongings they could carry in a small vehicle, hired at an exhorbitant price. The vehicle reached the outskirts of Srinagar in the early hours of morning where I had been instructed to wait. No one spoke a word. The vehicle sped away and by the onset of the dawn, the vehicle was racing up the hill slopes of Banihal."

There is enough ground to believe that the danger of widespread massacre of Hindus, particularly the Kashmiri Pandits, was iminent and a single false step would have cost them thousands of their lives and perhaps, the honour of their women. Thirty eight per cent of the respondents living in the towns, 46 percent of the respondents living in villages and 71 per cent respondents living in remote villages, stated that threats were communicated to them through their Muslim neighbours and acquaintances. Forty two per cent of the respondents living in the towns, 69 per cent of the respondents living in villages and 68 per cent of the respondents living in remote village stated that secret intelligence reached them that they had been accused of espionage for India. Most of them stated that they knew that the accusation of "Mukhbiri" or espionage was the warrant of death. Sixty one per cent of the respondents who received information of being accused of "Mukhbiri" stated that they left their homes in the darkness of the night to avoid interception. Thirty two per cent of the respondents living in the towns, 41 per cent in the villages and 76 per cent of the respondents living in the remote villages stated that they had secretly been counselled by their Muslim neighbours to shift to Jammu as conditions for their stay in Kashmir involved risk to their lives. Eighty two per cent of the respondents living in the towns and 57 per cent living in remote villages stated that the long discourses, broadcast on the public address systems of the Muslim mosques on the sacred mission of the Muslim crusade in Kashmir, warned the infidels and traitors to leave Kashmir or face death. A political activist of Anantnag district in Kashmir stated in an interview : "The warning was not veiled, it was blunt and outright. The amplifiers fit on the minarettes of the mosques, shrieked vengeance against the infidels and exhorted them to leave or face death. 'Ay Zalimo, Ay Kafiro, Kashmir Hamara Chor Do,' meaning : "O oppressors; O infidels; quit our Kashmir," was one slogan which was repeateldy broadcast from the mosques throughout the length and breadth of the Kashmir valley. These are the facts of history. The first attack of the Muslim militancy was focussed on us. The people in India must know the truth. The longer the truth is concealed, graver are the dangers to the nation." Sixty two per cent of respondents living in the towns, 21 per cent respondents living in the villages and 8 per cent of respondents living in remote villages, stated that they read notices printed in Urdu

Newspapers, warning the Hindus to leave Kashmir within specified time limits. Sixty seven per cent of the respondents living in the towns and 47 per cent of the villages were forced out of their homes to join the rampaging mobs in the streets during the night of 19 January 1990. Eighty one per cent of the respondents agreed, that they hid their women and children lest they were attacked. Twelve per cent of the respondents accepted that unruly bands of strangers entered their homes and their behaviour was menacingly dangerous. Eighty one per cent of the respondents stated that during the night of 19th January, 1990, and the nights which followed, they hid their women folk and their children from the unrly strangers who broke into their homes. Eighty seven percent of the respondents living in the towns, sixty seven per cent of the respondents living in vllages and sixty eight per cent of the respondents living in the remote villages stated that they did not dare lodge any complaints with local Police Stations because (*a*) they feared retaliation by the militants (*b*) their identity would be revealed to the militants by elements in the Police Stations who were in contact with the militants, (*c*) the militants kept a strict watch on the Police Posts. Seventy nine per cent of the respondents living in towns and thirty eight per cent living in villages stated that the Police Posts in their local areas did not function.

Seventy eight per cent of the respondents living in the towns and 83 per cent respondents living in the villages stated that they apprehended attack on their womenfolk. "There was a menacing fear among us," an octagararian Kashmri Pandit stated in his interview, "that our womenfolk would be subjected to assault. Various ominous rumours floated round that the young Hindu women would be rounded up for mass conversion to Islam. The rumours were not completely unfounded, several familities in my locality scretely confided in me that they had seen suspicious characters prowling around their homes at the odd hours of the day. These families were among the first to quit our locality. 86 per cent of the respondents living in towns accepted having decided to abandon their homes and leave Kashmir after the traumatic experience of the events on 19 January 1990, when they found themselves left along to their fate, face to face with death and dishonour. The stunning surprise that we received the next day was that the entire valley had been abandoned to the wolves and the police, the Magistracy and the law had withdrawn from all

active function. Few Kashmiri Hindus were killed on 19 January but several of the houses were ransacked and the inmates treated with little impunity," A local teacher living in Srinagar stated in his interview : "A Hindu neighbour, a man of some connections, told me the next day that he had made frantic telephone calls to the office of the Governor and to some of his friends in Jammu and Delhi, that the terror had broken out in the streets and they could be swallowed by it any movement. Ninety three per cent of the respondents living in towns and 63 percent respondents living in villages stated that they did not want to join the night-long Muslim demonstration and violence, that commenced on 19 January, 1990. Forty three per cent of the respondents living in the towns and 14 per cent respondents living in the villages accepted that they had evacuated under the protection provided by the Central Security Force and (*b*) that they would be trapped in case the Security cover was not available to them.

Eighty eight per cent of the respondents stated that if they had not evacuated they would have been assasinated in large numbers. Ninety two per cent of the respondents stated that if they had not evacuated their women would have been subject to assault. 46 per cent of the respondents living in the towns, 61 per cent in the villages and 83 per cent living in remote villages stated that if they had not evacuated they would have run the risk of forcible conversion from their religion.

Fifty two per cent of the women respondents living in towns and 86 per cent of the women respondents living in village stated that their men were marked for death and, therefore, they pressed them for evacuation. Sixty eight per cent of the women respondents living in the towns and 74 per cent living in villages stated that they apprehended attack on their homes. Sixty three per cent of the women respondents stated that they had evacuated because of the widespread assassination of the Hindus. Eighty eight per cent of the women respondents living in towns and 96 per cent living in the villages, accepted that they feared assasult on their families. Seventy six per cent of the women respondents livin in towns and 72 per cent living in villages stated that they apprehended wholesale conversion of the Hindus Eighty eight per cent of the women respondents stated that there was no guarantee of life in their localities and their evacuation was necessary. Ninety seven per

cent of the women respondents stated that if they had not evacuated, they would have been liquidated in large numbers.

None of the respondents stated having received any overt or convert instructions from the State Government or the Governor or his office. Six per cent of the respondents in the towns and 8 per cent of the respondents in the villages stated that they were advised by various formations of the Central Securiy Forces, to evacuate to safer places.

No. 166
Memorandum submitted to Karan Singh Committee on Autonony by Co-Chairman Joint Human Rights Committee. (Extracts).

The British colonial organisation in India was divided into two parts : (a) the British India, ruled directly by the British through the Governor-General of India and the Governors of the Provinces and (b) the Princely States which were ruled by the Princes, under the control of the British Paramountcy. Paramountcy underlined the supermacy and the authority, the British exercised over the States. The British did not recognise the States as independent indentities and time and agian reiterated that though they were organised into a seperate political organisation, they were a subservient part of the British empire in India.

The transfer of power in India in 1947, involved the division of the British Indian Provinces into two Dominions of India and Pakistan. The States were not brought within the scope of the division of India. The British dissolved the Paramountcy, liberating the 562 States from thier supermacy. However, the British refused to recognise the independence of the States after they were freed from the authority and the supermacy of the British Crown.

The consequence of the transfer of power for the States were :-

(*i*) rulers were liberated from their subjection to the Paramountcy, but they were not recoganised as independent identities;

(*ii*) they were left free to continue or reconstitute their relationships with the two Dominions of India and Pakistan

by a process of accession to either of them or by arrangements which they made among themselves;

(*iii*) the principles of the partition did not form the basis of their future disposition in regard to the accession of their States to the two Dominions.

The most vital aspect of the partition of the British India, if must noted was that the partition underlined the seperation of the Muslim majority regions of the Muslim majority Provinces of the Punjab and Bengal and the Hindu majority Province of Assam with the whole Muslim majority Province of Sind to form the seperate State of Pakistan. The Muslims of North-West Frontier Province and the Jirga leaders of the Chief-Commisioners Province of Bluchistan were given the option to join the new state of Pakistan. The Muslims in the North-West Frontier Province and Bluchistan for Pakistan.

The Princely States, it must be clearly known, were excluded from the entire process of seperating the Muslim majority Provinces and region into seperate State of Pakistan. The Muslim League and the British insisted upon the exclusion of the states from the scope and consquences of the partition of the British India, each for their own intersets. The League wanted to grab the Muslim ruled States where the rulers were deadly opposed to the accession of their States with India and favoured alignments with Pakistan. The British were interested in Balkanising India by supporting the independence of the major Indian States, which they belived could realigned into a cluster of Indian kingdom under the prolectorate of the British empire.

The League did not claim and State, including Jammu and Kashmir on the Basis of the Muslin majority character of its population. The Congress concurred with the British and the League on the exclusion of the States from the process of the patition and neither the League nor the Congress accepted demographic composition of the Princely States, which imparted to them a Muslim majority indentity or a Hindu majority indentity, as a determination their accession to either of the two Dominions. The Muslim League opposed the accession of the States on the basis of the composition of their population and accepted the accession of Junagarh, a Hindu majority State situated in Kathiawad, a part of

the Indain Dominion, as an act, valid and in accordance with the Indian Independence Act. Kalat, a Muslim ruled State, situated inside the territories of Pakistan and opposed to its accession to Pakistan, was forced to accede to Pakistan.

The Muslim majority character of the State of Jammu and Kashmir, as a factor in determinig its accession was inducted by Pakistan into its claim on the State after it had lost both Junagarh and hyderabad. The seperate Muslim identity of Jammu and Kashmir, is therefore, neither relevant to its accession to India nor to its history after its accession.

Any claim, made now, that the States, including? Jammu and Kashmir were, (a) subject to the partition of India, (b) were seggregated into Hindu majority identies and Muslim majority indenties, (c) the accession of the Jammu and Kashmir State was subject to its Muslim majority composition, is a distortion of history. No state in India was classified as a Hindu majority indentity or a Muslim majority indentity as a condition for its accession.

The Partition Plan, later embodied in the Indian Independence Act, left the Princes, free to initiate further divisions of India. It laid no basis for the settlement of the question of the States, which faced India with a graver challenge than the transfer of power. The Muslim rulers of many states, situated in the middle of India, were opposed to the integration of their States with India. Junagarh, as noted, above acceded to Pakistan and Hyderabad rejected accession to India outright. Military action was undertaken by India to secure the accession of both and Junagarh as well as Hyderabad. Jammu and Kashmir was contiguous to India and formed the centeral feature of the northern frontier of India. India had to resort to military action in Jammu and Kashmir also, to save it from the invading forces of and secure its accession to India.

The whole process of the accession of Junagarh, Hyderabad, Jammu and Kashmir and other States, was essentially political in content. The Hindu majority of Junagarh or Hyderabad, or the Muslim majority of Jammu and Kashmir, was irrelevant to their integration with India. The state were vital to the unity of India and after the British had left, Muslim separation symbolised by Pakistan , could not withstand the powerful movement for the unity of India. Indian Muslims foisted the partition on India, with the

support of the British. But after the British had ceased to be masters in India, Pakistan was unable to force another patition on India and divide the States as well.

ARTICLE 370

Maharaja Hari Singh, the ruler of Jammu and Kashmir State, signed the same standard form of the Instrument of Accession in October 1947, which the other Indian rulers signed to acede to the then Indian Dominion. The Instrument of Accession was evolved by the States Department, headed by Vallabh Bhai Patel, and was based upon the principles, the Cabinet Mission had stipulated for the accession of the Indian States to the All India federation. All the rulers of the acceding States retained all the residuary powers of government and the Instrument of Accession they signed, underlined the delegation of powers to the Dominion Government in respect of foreign affairs, defence and communications only. Among the other rulers, Hari Singh too, retained the residuary powers of the government, and the Instrument of Accession he signed envisaged the delegation of powers to the Dominion Government of India in respect of foreign affairs, defence and communications. The Instrument of Accession did not bind any acceeding State, including Jammu and Kashmir, to accept the future constitution of India.

No separate or special provisions were incorporated in the Instrument of Accession singned by Hari Singh and there was no precondition or agreement, specially accepted by the Government of India to accord any separate and special constitutional position to Jammu and Kashmir to the exclusion of the other acceding States.

The Instrument of Accession, which the rulers of the Princely States executed to join the Indin Dominion, reserved them the right to convene Constituent Assemblies to frame the constitutions for their repective governments. The ruler of Jammu and Kashmir was also reserved the right to convene a Constituent Assembly to frame a constitution for his government. The constituent Assembly of India, was by mutual consensus of the Premiers of the States and the representatives of the Constituent Assembly, entrusted with the task of evolving a model constitution, which the Constituent Assemblies of the States would follow in order to avoid any conflict between the Constitution of India and the Constitutions of the States.

Constituent Assemblies were convened in the Mysore State, the States Union of Saurashtra and the States Union of Travancore-Cochin.

In 1949, an extraordinary decision, was taken by the Premiers of the States in a Conference held in Delhi. They decided to entrust to the Constituent Assembly of India the task of framing a uniform set of constitutional provisions for all the States. The constitutional provisions for the States, the Conference decided, would be incorporated in the Constitution of India.

The National Conference leaders did not accept the decision of the Premiers' Conference and insisted upon convocation of a separate Constituent Assembly for Jammu and Kashmir. Consequently, a conference of the National Conference leaders and representatives of the Dominion Government, in which Nehru and Sheikh Mohammad Abdullah participated, was convened in Delhi, shortly after the Premiers' Conference.

The Conference leaders stunned Nehru and the other Congress leaders when they refused to accept the application of any provisions of the Constitution of India to the State and instead upon the continuation of federal relation between the proposed Union of India and Jammu and Kashmir, on the basis of the Instrument of Accession. In other words they demanded the exclusion of the State from the consitutional organisation of India and its reorganisation into a separate political entity which would be aligned with the Union of India in respect of external relations, defence and communications. The Confrence leaders proposed that :

(*i*) the rule of the Dogra dynasty be abolished;

(*ii*) the state be excluded from the constitutional organisation of India;

(*iii*) the relations between the Union and the State be governed by the stipulations of the Instrument of Accession;

(*iv*) the control over the State army be transferred to the Interim Government of the State;

(*v*) the Interim Government be empowered to institute a separate Constituent Assembly to draw up a Constitution for the State.

The National Confrence harboured completly different views about the constitutional relations between the State and India. They visualised the State as a separate political entity with its own constitutional organisations, independent of the political organisation of India in respect of which the Union assumed the reponsibility of defence, communications and external relations within the stipualtions of the Instrument of Accession. The Conference leaders were motivated by a subtle consideration that since the execution of the Instrument of Accession by Maharaja Hari Singh, which the Confrence leaders derisively described as "Paper Accession" was subject to a plebiscite, the Muslims in Jammu and Kashmir, has assumed a veto over the accession of the State to India. To retain the Muslims, the right to veto on the accession of the State, the Conference leaders evaded any fresh constitutional postulates and agreement with the Indian Union, which would replace the Instrument of Accession or would alter its consequences.

Long and protracted negotiations between the Conference leaders and the Government of India ended in failure as the Conference leaders insisted upon the complete exclusion of the State from the Indian Union and the Indian Constitutional organisation.

Nehru was frightened of a situation of conflict with the Confrence leaders. The Confrence support-bases were among the Kashmiri speaking Muslims, and India depended upon the Kashmiri-speaking Muslims to win the plebiscite, envisaged Security Council resolutions. The Kashmiri speaking Muslims formed almost half the Muslim population of the State and together with the Hindus, the Sikhs and the Budhists, a million people, they constituated around 62 per cent of the total population of the State. Cought in a snare, Nehru, accepted the exclusion of the State, from the constitutional organisations of India the Conference leaders demanded. Finally a draft of the special provisions in respect of Jammu and Kashmir was evolved, by virtue of which the provisions of Article 1 of the Constitution of India would apply to the State and the division of powers between the union and the State would be determined by the terms of the Instrument of Accession. No other provision of the Constitution of India would apply to the State. Both the Government of India and the National Conference accepted to include the special provisions for Jammu and Kashmir in the transitional provisions of the Constitution India, each side

for its own reasons. The Government of India maintained that the special; provisions were transitory in nature and would lead to the eventual integration of the State with Indian Union. The Conference leaders claimed, in muffled tones, that the transitory nature of the special provisions, was a guarantee of the veto, which the United Nations resolution had ensured the Muslims of the State to determine its desposition in respect of its accession. The sordid drama unfloded two years later, when the Conference leaders, claimed plenary powers for the Constituent Assembly of the State, to determine, whether the State remained in India, acceded to Pakistan or assumed independence.

The special provisions, embodied in Article 306-A, of the draft Constitution of India, were passed by the Constituent Assembly on 17 October 1949, in an atmosphee of extreme suspicion, because, the National Conference leaders sulked away on account of some differences of opinion about the definition of the State Government. Article 306-A was renumbered Aricle 370 at the revision stage. The provisions of Article 370 envigased :

(*i*) Jammu and Kashmir was included in the territories of India, defined in Schedule 1 of the Constitution of India;

(*ii*) the division of powers between the Union and Jammu and Kashmir was limited to the subjects transferred by the Instrument of Accession to the Government of India;

(*iii*) no other provision of the Constitution of Inida was made applicable to Jammu and Kashmir;

(*iv*) other Provisions of the Constitution of India could be further applied to Jammu and Kashmir by the President of India in concurrence with the Government of the State;

(*v*) the operation of Article 370 could be aborgated or be ordered to be "operative with such exceptions and modifications" as the President would by order specify on the recommendations of the Constituteny Assembly of the State.

Article 370, was an act of limitation, which imposed limitations on the application of the constitution of India to the Jammu and Kashmir State was included in the territories of the Union, but excluded from its Constitutional organisations. Jammu and Kashmir

was thus formed into a separate political organisation on the terrotories of India, based upon the Muslim majority character of its population and independnt of the constitutional imperatives of the Union of India.

BASIC INTENT

The basic intent and the underlying spirit of the special provisions, envisaged by Article 370, cannot be ignored for political expendiency, petty vested interests and the necessity to establish balances with Muslim communalism to protect secularism in India. Secularism in India, is a watchword to ensure the support of the Muslim vote-bank. The intention of the Constituent Assembly of India, to provide special provisions for the State of Jammu and Kashmir, was to make transitional and temporary arrangements in regard to Jammu and Kashmir, for a period of time, till the Constituent Assembly of the State framed the Constitution of the State, and after that was accomplished, disslove itself and the special provisions of the Constitution of India envisaged by Article 370 would be terminated. At no time were any commitments given to the representatiyes of national Conference that the Muslim majority character of the population of the state, ensured it a separate political identity, which did not form a part of the Indian Union. The provisions of Article as in the case of the other States. Part of the State is still in the hands of rebels and enemies. We are entangle with the United Nations in regard to Jammu and Kashmir and it is not possible to say now when we shall be free this entanglement".

Neither Nehru nor Ayangar, could have admitted in the Constituent Assembly, that they excluded Jammu and Kashmir from the constitutional organisation of India under the pressure of the Conference leadership aganist their will. Many members of the Constituent Assembly. veterans of the struggle aganist the British and the League, were far from satisfied with the special provisions and demanded an assurance from the Indian Government that the exclusion of the State from the constituional organisation of India would be only for a temporary period, and the Article 370 was accordingly included in the temporary and transitional provisions of the Constituent Assembly of India. Ayangar assured the Constituent Assembly that the Instrument of Accession signed by the rulers of the State had made the State an inseparable part of the Dominion of India."As the House is aware, "Ayangar told the

Constituent Assembly, "accession to the Dominion always took place by means of an instrument which had to be signed by the ruler of the State and which had been accepted by the Governor General of India. That has taken place in this case. As the House is also aware, the Instrument of Accession will be a thing of the past in the new constitution. The States have been integrated with the Federal Republic in such a manner that they do not have to accede to or execute a document of accession for the purpose of becoming units of the republic, but they are mentioned in the Constitution itself, and in the case of practically all the States other than the State of Jammu and Kashmir. Their constitutions also have been embodied in the Constitution for the whole of India. All those other States have agreed to integrate themselves in that way and accept the Constitution." When Hasrat Mohani objected to the discrimination between Jammu and Kashmir and the other Indian State, Ayangar assured the Assembly that the State would be integrated in the Republic of India, in the same way the other States were. "The discrimination is due to the special conditions of Kashmir" Ayangar stated, "That particualr State is not ripe for this kind of integration. It is the hope of everybody here that in due course even Jammu and Kashmir will become ripe for the same sort of integration as has taken place in the case of other States. At present it is not possible to achieve that integration. There are various reasons why this is not possible now."

Gopalaswamy stated further that steps would be taken to institute a Constituent Assembly in the State, to intergrate the State in the Republic of India, and the provisions of the Constitution of India would made applicable to the state, if necessary with such modifications and exceptions as the Constituent Assembly of the State proposed. He observed : "The effect of this article is that the Jammu and Kashmir State is now a part of India will continue to be part of India, will be the unit of the future Federal Republic of India and the Union Legislature will get jurisdiction to enact laws on matters specified either in the Instrument of Accession or by latter additions with the concurrence of the Government of the State. And Steps have to be taken for the purpose of convening a Constituent Assembly in due course which will go into the matters I have already referred to when it came to a decisioin on the different matters it will make a recommendation to the President who will either abrogate Article 306-A or direct that it shall apply

with such modifications and exceptions as the Constituent Assembly may recommend."

Ayangar stated clearly the intended purpose of the special provisions for Jammu and Kashmir and left no one, the representatives of the State included, in doubt about the future integration of the state into the Union of India.

DELHI AGREEMENT

The exclusion of the state from the political organisation of India had disasterous consequences. The National Conference called for the convocation of the Constituent Assembly in 1950. In 1951, the Constituent Assembly was convened. In the Constituent Assembly the Conference leaders claimed:

(i) that the Constituent Assembly was vested with plenary powers, which were drawn from the people of the State who had elected the Constituent Assembly ;

(ii) that the Constituent Assembly was vested with the power to determine whether the State would accede to India or Pakistan or assume independence ;

(iii) that the Constituent Assembly was vested with the power to determine the nature and content of the relations of the State with Indian Union.

The Conference claim to a separate charge for the Constituent Assembly of the State vested it with powers which were plenary to it, virtually repudiated the accession of the State to a single, indivisble sovereign state of India, dissolving at once all original, plenary and independent powers of the state. The accession of the States to India was final and irrevocable and not subject to any conditions, except those inherent in its execution by virtue of the Instrument of Accession. The States in India, even prior to their accession to India, were neither sovereign nor independent. The British did not ever, during their rule in India, recognise that the Princely States were independent or sovereign entities and the British Government made it clear in a number of statements in the British Parliament that they did not recognise the States as independent countries nor would they accept to recognise them as Dominions. The accession of the States, was evidently an act of the dissolution of their separate identity with the basic effect of ;

(*i*) uniting the territories of the States with the territories of India;

(*ii*) integrating the people of the States with the nationality of Inida;

(*iii*) merging the authority exercised by the Princes with the Sovereignty of India.

The Constituent Assembly of the State derived its powers from the Constitution of India by virtue of Article 370, which stipulated the institution of a Constituent Assembly in the State and was subject to the stipulations of the Instrument of Accession as well as the Constitution of India. Accession involved the process of irreversible union of the States with the Indian Dominion, federalisation of powers between the Dominion and the acceding States and dissolution of the Princely India. The powers, the State were left to excercise by virtue of the Instrument of Accession, were drawn from the Union and its Constitution.

The reaction of the Hindus in the State, paticularly in Jammu was severly adverse to the exclusion of the State from the Consitutional organisation of India and the claims conference leaders made that the Constituent Assembly, would not only drawn up the Constitution of the State, but it would also decide whether the State would remain with India or secede from India to join Pakistan or assume independence and if it remained in India determine the constitutional relations between the State and the Union. The Hidus were fearful of the uncertainly the exclusion of the State from the constitutional organisation of India had created among the people of the state. They were also acutely aware of the repercussions, of the demand of the National Conference to open fresh options for the people to revoke the accession of the State. The claim of the Conference leaders to plenary powers for the constituent Assembly of the State to determine whether the State would secede from India, accede to Pakistan or assume independence, the Hindus realised as much as the Muslims inside in the State as well as Pakistan did, virtually opened an option for the Muslims to repudiate the accession to India.

The Muslimisation of the State, ravaged the Hindus economically as well as politically. The Conference caders denigrated the Hidus of Kashmir as mercenaries whom the Dogras

had nutured and who were trying to bring about the subjugation of the Muslims to the Hindus in India. Persecuation, economic deprivation, elimaination from almost all political processes and exclusion from educational institutions, isolated them and broke them up. Many of them left Kashmir. The rest quietly settled down to the servitude of a Muslim State. A part of the "White Paper" issued by the Joint Human Rights Committee, is quoted below :-

"The economic strangulation of the Hidus in Kashmir, particulary their exclusion from the government and The administrative proccesses and the restrictions placed upon their admission to educational institutions had a devastating effect on them. The policy of communal precedence was vigorusly followed by Successive State Governments and the Hindus continued to suffer almost to the present day the ravages, which the enforcement of communal precedence wrought in the entire State. In Kashmir, the Hindus gradually abondend their homes and migrated to the other parts of India in search of livelihood. More than two lakhs of Kashmiri HIndus were compelled to migrate to Jammu and the other parts of India."

The Constituent Assembly adopted a resolution to abolish the hereditary rule of the Dogras dynasty and replace the ruler of the State by a head of the State, who would be elected to his office on a fixed tenure. The Conference leaders, sought to install one of their proteges, a Muslim if they could or in case the installation of a Muslim aroused suspicion, a Hindu of the Scheduled Castes, to break up the Hindu opposition to the separate political organisation of the State.

The Government of India did not approve of the manner in which piece-meal constitutional changes, sought to be undertaken by the Constituent Assembly of the State. The Conference leaders were informed that the Indian Government did not approve any changes in the constitutional organisation of the State, which did not correspond to the basic structure of the Indian Constitution. Besides the Government expressed its desire to devise the broad basis of the future constitutional organisation of the State, to avoid any conflict with the Constitution of India, and to ensure such changes in the relations between the State and the Union of India, as would be warranted by such reforms. Nehru told the Parliament of India : "Now this position might well have lasted some time

longer, but for the fact that the Constituent Assembly of Kashmir came into existence with our goodwill and with our consent. Now it is sitting to draw up its constitutions. When it is drawing up its constitution it has to be insome precise terms; it cannot be fluid. Therefore, the question arose that nothing should be done by the Constituent Assembly of Jammu and Kashmir State, which does not fit in with our Constitution, which in no sense is contrary to it or conflicts with any part it."

A delegation of the Conference leaders was despatched by the Interim Government to Delhi for talks with the Government of India. In the delegation were Mirza Beg, Syed Mir Qasim and M.A. Shahmiri, the Constitutional Advisor to the Constituent Assembly of the State. Shiekh Mohammad Abdullah joined the delegation later.

During the deliberations, the Conference leaders were told by none else than Nehru himself that piece meal decision could not be taken on isolated constitutional issues as they came up for considerations from time to time and it would be necessary to arrive at an understanding on the entire Constitutional framework of the State. He also told the Conference leaders that it was also necessary to consider the reorganisation of the relations between the State and the Union to give a form of finality and uniformity to them.

An agreement, which came to be known as the "Delhi Agreement", was finally concluded, which envisaged the partial application of the provisions of the Constitution of India in regard to citizenship,fundamental rights, and the original jurisidiction of the Supreme Court to the State. An understanding was reached that:

(i) the Constituent Assembly would ratify the accession of the state to India, before it took any decision on the constitutional reorganisation of the State; and

(ii) the reorganisation of the constitutional reorganisation of the constitutional relations between the State and Union of India and the constitutional change involves in the abolition of the hereditaryrule of the Dogra dynasty would be implemented simultaneously.

In his report to the Constituent Assembly on the Delhi Agreement, Shiekh Mohammad Abdull stunned the Indian Government, when he almost cast the agreement overboard. He told the members of the Assembly that the Delhi Agreement envisaged tentative decisions. "Since the changes proposed by this Assembly involved corresponding adjustments in the Indian Constitution", ShiekhMohammad Abdullah states, "the Government of India desired that it should have time to discuss with our representatives other matters pertaining to the constitutional relationship of our State with the Union. During the last stage of these discussions, it became necessary for me and some of my other colleagues in the Government, to participate in the talks. I am now in a position to inform the House that certain broad principles were laid down and certain decisions have been tentatively arrived at between the two governments." He questioned the validity of the instruments created by the Constituent Assembly and repudiated the supermacy of the Consitution of India, when he asserted : 'If follows that whatever modifications, amendments or exceptions, that may become necessary either to Article 370 or any Article in the Constitution of India in their application to the Jammu and Kashmir State, are subjected to the decisions of this sovereign body." The Constituent Assembly of the State, he claimed was the soverign authority, independent of the instruments created by the Constituent Assembly of India.

Mirza Beg went further, when claimed that Article 370 of the Constitution of India was provisional in nature, because a final constitutional settlement between the State and the Union of India depended upon the decision of the Constituent Assembly of the State. Beg overtly suggested that the temporary nature of Article 370 emnated from the provisional nature of the accession of the State to India and therefore, special constitutional provisions envigased by Article 370 were subject to the veto of the Constituent assembly of the State. 'Nobody here could entertrain the idea that Kashmir will be dragged to the position of part B States. I may make it clear on the floor of the House that Kashmir will never come to the position part B States. We have good reason for that. All acceding States were classified as Part B States." The National Conference had set its mind against actually closed the door to any integration of the State into the constitutioanl organisation of India. The Delhi Agreement was discarded by the Confernce leaders

before ink had dried on it.

The Constituent Asembly abolished the hereditary rule of the Dogra dynasty in November 1952. But it did not implement the other provision of the Delhi Agreement, nor did it adopt the resolution to ratify the accession of the State to India.

The Interim Government was dismissed in August 1953, and a second Interim Government, headed by Bakhshi Gulam Mohammad was installed in its place. Another Conference of the Conference leaders and the representantives of the Government of India was held in Delhi and a fresh agreement concluded, in regard to the future constitutional organisation of the State and the relations between the state and the Union of India.

Accordingly, the Constituent Assembly of the state entrusted the Basic Principles and the Committee, on citizenship and Fudamental Rights, which were promptly reconstituted after the dismissal of the first Interim Government to draw up proposals forthe implementation of the agreement to bring the State within the scope of the fundamental rights and related legal guarrantees envisaged by the Constitution of India. The reports of the Basic Principles Committee and the advisory Committee on citizenship and Fundamental Rights were presented to the Constituent Assembly on 3 February 1954. In its report, the Basic Principles Committee observed:

When the Dominion of India became a republic, the relationship of the State with the Union was embodied in Article 370 of the Union Constitution. The States accession to the Union entails certain responsibilities on the centre for protecting the interests of the State and also for its social and economic development. In order to enable the Centre to discharge its responsibilities which devolve upon it under the Constitution, those provisions of the Constitution of India, which may be necessary for this purpose should be made applicable to the State in an appropriate manner. While preserving the internal autonomy of the State all the obligaitons which flow from the fact of the accession and its elaborationas contained in the Delhi Agreement should find an appropriate place inthe Constitution. The Committee is of the opinion that it is high time that finality in this respect should be reached and the relationship of the State with the Union should be expressed in clear and precise

terms.

The proposals, embodied in the report of the Drafting Committee, was presented to the Constituent Assembly on 11 February 1954. The recommendations of the Constituent Assembly, envisaged the application ofthe Constitution of India, in respect of the territories of the Union,Citizenship, Fundamental Rights and related safeguards, emergencies arising out of war and aggression, original jurisdiction of the Supreme Court, executive powers of the President of India, and the elections to the Parliament. On 14 May 1954,the President of India extended the provisions of the Constitution of India, embodied in the recommendations of the Constituent Assembly.

Sheikh Mohammad Abdulla hand Beg denounced the decisions of the Constituent Assembly, and claimed that the Constituent Assembly had lost its representative character, with the dissolution of the Interim Government. The truth is that the Constituent Assembly remained as representative of the Peoples' will after the dissolution of the Interim Government as it was before its dissolution. the members of the Constituent Assembly, returned unopposed, were not less committed to the constitutional change in Jammu and Kashmir, after they had repudiated their loyalty to Sheikh Mohammad Abdullah. The Conference leadership, professed commitment to democratic principles and representative government, but simultaneoulsy insisted upon the fascist slogan of "one leader, one party and one programme."

The Proclamation of the President underlined partial application of the Constitution of India to the State. The application of citizenship and fundamental rights, was subject to so many exceptions and reservations, which in effect, hollowed them of their effect. No mention was made in the provisions of the Constitution of India applied to the State or the reservations imposed on them, of the two and a half hundred thousand Hindu and Sikh refugees, who were awaiting settlement in the State, though special provisions were made for the return and settlement of the Muslims who had gone over to Pakistan and fratermised with the enemy in 1947, and settled in Azad Kashmir. The Interim Government preserved to itself the authority to :

(*i*) promote the Muslimisation of the State;

(*ii*) enforce communal precedence of the Muslim majority in the government, economic organisation and the society of the State; and

(*iii*) vest the State Government with arbitrary powers to limit freedom, personal liberty, freedom, and right to free expression and speech.

The Interim Governments sought to earn the support of the Muslims in the State, by trying to prove that they were more Muslim than Pakistan. The general refrain of the Conference leaders was that in Kashmir, the Muslim commitment to Islam was greater than it was in Pakistan and the form of the government established by the National Conference and the policies followed by it, were a more secure guarrantee for the Muslims to achieve their Islamic destiny. The rest of the population, the Hindus, the Sikhs and the Buddhists, around 40% of the total population of the State, were of little consequence to the organisation and the objective of the government. They had no rights except those, permitted to the minorities in a Muslim State.

That an understanding had been reached between Sheikh Mohammad Abdullah and the other Indian leaders, to secure his support for the accession of the state to India on the condition that Jammu and Kashmir, would not be included in the Indian constitutional organisation but would be reorganised into a Muslim State on the territory of India, is a distortion of history. The Honourable Chairman of the Committee Dr. Karan Singh is a witness to that era of turmoil and he must procure for the persual of the Committee, the contemporary records in respect of the evolution of the special provisions for the State from 1947. Dr. Karan Singh, played a historical role, in the events, which followed each other with staggering rapidity, and he was actively involved in the amendments which the Interim Government introduced in the Constitution Act of 1939. He resolutely refused to acceopt amendments in the Constitution Act, which, would, in the long run have, proved harmful to the relations between Jammu and Kashmir. Nehru shared his confidence with Karan Singh, in several meetings to which he was invited by the former. Nehru was sore at the exclusion of the State from the basic structure of the

Constitution of India, its citizenship, rights and related legal guarrantees its secular character and the principles of state policy.

The State would have been brought within the Constitutional organisation of India in 1950, if the Conference leaders had not refused to accept its inclusion in the constitutional organisation of India in 1949. Nehru strongly disapproved of the exclusion of the State from the constitutional organisation of India and insisted upon the application of the provisions of the Constitution of India to the State in respect of citizenship, fundamental rights and related constitutional safeguards and the principles of state policy. The Conference leaders broke off the negotiations and threatened to resign from the Constituent Assembly.

Article 370 was a product of political backmail. The Indian leadership, frightened that a breach with the National Conference leaders, would lead to the consolidation of the pro-Pakistan forces in the State, weaken the Indian position in the Security Council and alienate the Kashmiri-speaking Muslims, accepted the exclusion of the State from the Indian constitutional organisation under pressure.

The National Conference leaders followed a measured strategy to protect the State with the help of India from the invasion in 1947. After that was accomplished they sought the support of Pakistan, to insulate the State from India and ensure it a position of equidistance from both India and Pakistan.

In 1952, when the Constituent Assembly of the State adopted the resolution to abolish the rule of the Maharaja who by a separate notification of the Governor General of India, had been nominated the Rajpramukh of Jammu and Kashmir, the Government of India, immediately informed the Conference leaders, that no changes in the existing constitutional position of the State could be brought about in the State, outside the scope of the Constitution of Indian, and the provisions of the Indian Constitution would have to be applied to the State, before any changes in the existing position could be brought about by the Constituent Assembly of the State.

INSTRUMENT OF ACCESSION

It has been noted above that the accession of the States was a consequence of the transfer in India and its accomplishment,

according to the procedure laid down by the Cabinet Mission Plan, which the British followed in regard to the States, implied the merger of the separate identity of the States with the Dominion of India. The British made it clear, that the States were not independent and the British would neither recognise their independence nor their Dominion status. The Indian Independence Act and the consequence of the accession of the States created the State a sovereign nation, entitled to all rights in the international community and subject to obligations, international law imposed upon it. The Constitution of India did not create the State of India. The State of India was created in 1947. The Constitution of India gave expression to that reality in 1949. The Instrument of Accession, therefore, was an act, performed three years before the Constitution of India was brought into force. It was an unconditional, irreversible and an unlaterable act, which solidified into a fact of the history of the State, the moment it was performed. It was not subject to any future Constitution of India, and the Constituent Assembly of India could not alter its consequences, whatever the circumstances.

It must be noted that the procedure involved in the Instrument of Accession, exhaused itself with its excution. As a matter of the constitutional reality, the State of Jammu and Kashmir, in the form it existed under the protection of the British Paramountcy, disappeared the moment, the Instrument of Accession was signed by Maharaja Hari Singh. In a matter of days, he ceased to be the "Maharaja" and was renominated as the Rajpramukh of the Jammu and Kashmir State.

An essential part of the Instruments of Accession, which the rulers of the States, including Maharaja Hari Singh, signed, was that the States did not bind themselves to accept the future Constitution of India, except by a subsequent act of acceptance. Evidently, the accession of the States, was and act independent of the constitutional organisation of India and the corresponding Constitutional organisation in the States. The Instrument of Accession ended with its execution for lack in time, before the separate provisions of Article 370 were envisaged.

The rulers of the States, waived off the condition, not to accept the future Constitution of India, in 1949, after the Premiers Conference in 1949. The intention was stated clearly in the report of the B.N. Rao Committee, that the provisions of the Constitution

relating to the Provinces, should be applied to the States with such modifications as would be found necessary. An Official Committee was set up in the Ministry of States, charged with the work of suggesting amendments to implement this decision. The recommendations of the Committee were discussed with the Drafting Committee of the Constituent Assembly which finalised the draft provisions. Consequently the Rajpramukhs of the Union of the State and the rulers of the States, including the Nawab of Hyderabad and Maharaja Hari Singh, issued proclamations which read : "That the Constitution of India shortly to be adopted by the Constituent Assembly of India shall be the Constitution" of their States, "as other parts of India and shall be enforced as such in accordance with the tenor or its provisions" and "that the provisions of the said Constitution shall, as from the date of its commencement, supercede and abrogate all other constitutional provisions inconsidtent therewith which are at present in force in the State." On 25 November, 1949, the Regent of the State issued another proclamation that the relations between the State and the Union of India, would be governed by the Constitution of India.

The autonomy of the State, the special provisions of the Constitution of India embodied in Article 370, were the instruments created by the Constituent Assembly of India. Ayangar observed in the Constituent Assembly, "As the House is aware, accession to the Dominion always took place by means of an instrument, which had to be signed by the Ruler of the State and which had to be accepted by the Governor-General of India. That has taken place in this case. As the House is also aware, Instrument of Accession will be a thing of the past in the new Constitution."

The limitations imposed upon the application of the Indian Constitution to Jammu and Kashmir embodied in Article 370, do not emnate from the Instrument of Accession which was an instrument created by the process of the transfer of power and which brought the Dominion of India into existence.

MODIFICATION AND AMENDMENT

Provisions were included in Article 370, which embodied procedures to :-

(*i*) further extend the application of the Constitution of India to the State;

(*ii*) revoke the operation of Article 370, or modify its operation.

Two essential aspects of these procedures must be noted. First, procedures were limited in their effect to abrogate or modify the "operation" of Article 370 and not the provisions of Article 370. Neither the President of India nor the Constituent Assembly was vested with any powers to amend Article 370 or abrogate it. In fact, powers to amend any part of the Constitution of India were never intended to be vested in any executive authority, including the President. Nor could the Constituent Assembly of the State be vested with the powers to amend the Constitution of India or a opart thereof. The founding fathers of the Constitution of India, were, specially keen, to entrust the powers to amend the Constitution of India, with the accredited representatives of the (*a*) Indian people and (*b*) the people in the Indian States; for any amendments to the Constitution of India affecting the federal relations between the Union and the States, the consent of the States was found to be essential.

It is preposterous and would be a stark violation of constitutional precept and precedent, if the provisions of Article, in regard to the powers of the President, embodied in sub–Clause (*b*) ii, of Clause (1) and sub–clause (*d*), were used to revoke the application of the Constitution of India to Jammu and Kashmir. In latter and intent, sub–clause (*b*) ii, and clause (*d*) of Article 370, clearly provide for the further extension of the application of the provision of the Constitution of India to the State. The President of India has no powers to restrict or withdraw the application of the operations of Article 370 to the State. The provisions of sub–clause (*b*) ii and clause (*d*) of Article 370 are incorporated in Article 370, to further integrate Jammu and Kashmir in the constitutional organisation of India and not to undo the integration of the State with India brought about during the last five decades, at a price, which has been paid by the Hindus, the Buddhists and the Sikhs of the State.

The powers vested with the President of India by virtue of Clause (3) of Article 370, were brought to their close, when the Constituent Assembly of the State dissolved itself in 1956.

Any attempt to misuse powers vested with the President of

India in accordance with sub-clause (*b*) ii and sub-clause (*d*) of clause (1) of Article 370, to reverse the application of the Constitution of India to the State, would be balatant violation of the precept and the precedent of the Constitution of India. Would any President of India, undo, on the whims and caprices of the government of the day in the centre and the State, what his predecessors accomplished to integrate the State with India and to strengthen the unity of the nation? If ever any President of India attempted to do so, he would come into conflict with the people of India.

When the Constituent Assembly of the State framed the Constitution of the State and subsequently dissolved itself, it did not vest any authority in any instrument of the government, including the State Legislature, in respect of the application of the Constitution of India to the State. The Constitution of Jammu and Kashmir imposes an absolute limitation on the State Legislature to accept for consideration any bill or resolution or any motion in respect of the "existing relations" between the State and the Union. The limitation imposed is of a permanent nature as the State Legislature is barred from amending sections 3, 5 and 147 by the provisions of the State constitution.

INTERNATIONAL TERRORISM

The fact that a claim is made for the restoration of the constitutional position that State had in 1952, thereby bringing about the exclusion of State from Indian constitutional organisation, at a time when a war of attrition being waged by pro-Pakistan forces in the State with the support of Pakistan, is vital to the deliberations of the Committee and ultimately its decisions. The terrorist violence in Kashmir and parts of the Jammu province, is symbolic of the ideological struggle, which is aimed to separate the Jammu and Kashmir from India and bring about its unification with the Muslim State of Pakistan in order that the Muslim majority of the State is able to realise its Islamic destiny. Terrorist violence in Kashmir is a part of international terrorism, which is motivated by a world view, visualising the international Muslim brotherhood as a unity and its commitment to a system of governance based upon the precept and precedent of Islam. The creation of Pakistan in,1947, was a landmark in the struggle for the unification of the Muslim Umah and ever since. Pakistan was created it has followed a

sustained policy of thrust for expansion towards the east, as a major strategy to spread across Jammu and Kashmir and take the Muslim power to the dominantly Muslim regions of Central Asia, Mongolia and Sinkiang. The terrorist violence in Jammu and Kashmir, is a continuation of the consolidation of Pan-Islamic unity, of which the creation of Pakistan was a part. Pakistan claimed Jammu and Kashmir on the basis of the Muslim majority of its population, and while terrorism raged in Kashmir, Pakistan demanded that India be divided again to carry the partition to its logical conclusion by ceding Jammu and Kashmir to Pakistan.

The questions that immediately arise : how is the restoration of the 1952, status relevent to the war of attrition raging in the State? How far will the exclusion of the State from the constitutional oganisation of India go to meet the Muslim movement for secession of the State from India? Are the militerised secessionist forces prepared to accept the exclusion of the State from the constitutional organisation of India as a basis to lay down their arms? How far are the pro-Pakistan militant forces prepared to accept the exclusion of the State from the Constitutional organisation of India, as a basis for a settlement on Kashmir?

Evidently, the exclusion of the State from the Indian Constitutional organisation, will not be acceptable to the secessionist military flanks, as a basis for a settlement, leaving them free to carry on the war of attrition in the State against India and the Hindus. It will only serve the purpose of carrying the State, almost into the no-man-s land between India and Pakistan, which would then be exposed to greater pulls from Pakistan. With the terrorist violence continuing inside the State, pressure would be mounted on India to accept the exclusion of the State from the terrotories of the Indian Union and its defence organisation. Perhaps, the National Conference leadership would, at that time, again intervene, and bring round India to accept a position of equidistance for the State from both India as well as Pakistan.

The proposals to ensure regional autonomy to Jammu and Ladakh, would ultimately lead to the division of the Jammu Province into the Muslim majority region and the Hindu majority region and in Ladakh, the separation of the Muslim majority district of Kargil, already accomplished by the grant of Hill Council. With the process of the elimination of the Hindus from the Muslim majority regions of the State, already completed in the Kashmir Province, the whole region, situated west of the Chenab would be

formed into a separate Muslim political organisation, on the basis of a modified form of the Dixon Plan, proposed, for the settlement of the Kashmir dispute in 1950. Once the State is disengaged from India, the pro-Pakistan Muslim forces would push it into Pakistan earlier than anticipated and perhaps, the National Conference, would eventually be prepared to reach a settlement with Pakistan, on the separate political identity of the Muslim majority regions of the State, in which would be included the occupied territories of Azad Kashmir within the territorial jurisdiction of Paksitan but outside its political organisation.

HINDUS AND MINORITIES

The Hindus and the other minorities the Buddhists as well as the Sikhs, oppose the exclusion of the State from the Indian constitutional organisation for the following reasons!

(*i*) the exclusion of the State from the constitutional organisation of India, would ultimately lead to strengthen secessionist forces in the State and increase the chances of international intervention,

(*ii*) the process of Muslimisation of the State, which was the net outcome of the so-called autonomy of the State, had provided enough ground for the fundamentalisation of the State and would lead to sharpening of Muslim separatism in the State;

(*iii*) the Muslimisation of the State and the enforcement of Muslim precedence in the society, economic organisation and the government of the State, had subjected the Hindus to the servitude of a Muslim State.

The exclusion of the State from the Indian constitutional organisation on the basis of the Muslim majority character of its population, implies that a Muslim majority State is a Muslim State and cannot form the part of the secular constitutional organisation of India. The demand for a separate Muslim State of Jammu and Kashmir, which 1952 status underlines, resembles closely the Muslim League demand for Pakistan. The basic issue is the creation of a Muslim State, which is not a part of India.

(Dr. M.K. Teng)
Professor.
Co-Chairman
Joint Human Rights
Committee

THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDERS

S.No.	Year		Partiulars
1.	1956		The Constitution (Application to Jammu and Kashmir) Amendment Order, 1956 (C.O. 51 dated. 11-2-1956).
2.	1958	(*i*)	The Constitution (Application to Jammu and Kashmir) Amendment Order, 1958 (C.O. 55 dated 16-1-1958).
3.		(*ii*)	The Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1958 (C.O. 56 dated 26-2-1958).
4.	1959	(*i*)	The Constitution (Application to Jammu and Kashmir) Amendment Order, 1959 (C.O. 57 dated 9-2-1959).
5.		(*ii*)	The Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1959 (C.O. 59 dated 23-4-1959).
6.	1960	(*i*)	The Constitution (Application to Jammu and Kashmir) Amendment Order, 1960 (C.O. 60 dated 20-1-1960).
7.		(*ii*)	The Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1960 (C.O. 61 dated 22-6-1960).
8.	1961		The Constitution (Application to Jammu and Kashmir) Amendment Order, 1963 (C.O. 62 dated 2-5-1961).

S.No.	Year		Partiulars
9.	1963		The Constitution (Application to Jammu and Kashmir) Amendment Order, 1963 (C.O. 66 dated 25-9-1963).
10.	1964	(*i*)	The Constitution (Application to Jammu and Kashmir) Amendment Order, 1964 (C.O. 69 dated 6-3-1964).
11.		(*ii*)	The Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1964 (C.O. 71 dated 2-10-1964).
12.		(*iii*)	The Constitution (Application to Jammu and Kashmir) Third Amendment Order, 1964 (C.O. 71 dated 21-12-1964).
13.	1965	(*i*)	The Constitution (Application to Jammu and Kashmir) Amendment Order, 1965 (C.O. 72 dated 17-5-1965).
14.		(*ii*)	The Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1965 (C.O. 74 dated 24-11-1965).
15.	1966		The Constitution (Application to Jammu and Kashmir) Amendment Order, 1966 (C.O. 75 dated 29-6-1966).
16.	1967	(*i*)	The Constitution (Application to Jammu and Kashmir) Amendment Order, 1967 (C.O. 76 dated 13-2-1967).
17.		(*ii*)	The Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1967 (C.O. 77 dated 5-5-1967).

S.No.	Year		Partiulars
18.		(*iii*)	The Constitution (Application to Jammu and Kashmir) Third Amendment Order, 1967 (C.O. 79 dated 11-8-1967).
19.		(*iv*)	The Constitution (Application to Jammu and Kashmir) FourthAmendment Order, 1967 (C.O. 80 dated 26-12-1967).
20.	1968		The Constitution (Application to Jammu and Kashmir) Amendment Order, 1968 (C.O. 83 dated 9-2-1968).
21.	1969	(*i*)	The Constitution (Application to Jammu and Kashmir) Amendment Order, 1969 (C.O. 85 dated 17-2-1969).
22.		(*ii*)	The Constitution (Application to Jammu and Kashmir) Second Amendment Order, 1969 (C.O. 86 dated 31-3-1969.

Note-1. The Constitution (Application to Jammu and Kashmir) Order, 1950 was the first Order made on 26th January, 1950 (C.O. 10 dated 26-1-1950). This Order was superseded by the Constitution (Application to Jammu and Kashmir) Order, 1954 (C.O. 48 dated 14-5-1954).

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